

## **TERMS AND CONDITIONS FOR GLOBAL TRADE SERVICES**

Following are the terms, conditions and rules ("**Terms**"), which shall be applicable to all Clients availing Trade Services from Kotak Mahindra Bank Limited ("**Bank**"). These Terms together with Schedules shall be read as a stand-alone document or may be read with such other documents / terms as may apply to a situation / circumstance / transaction with a Client. These Terms are in addition to the terms and conditions stipulated by the Bank in any sanction letter, facility and security documents and other documents / terms etc. as may apply to a particular Trade Service. In the event of any of the Terms being contrary to the terms and conditions as specified in the above referred documents or such other document(s) in respect of a Trade Service, the provisions of these Terms shall prevail. These Terms will be available at the Website of the Bank. The Client acknowledges and agrees that the Bank may at its sole discretion add to, modify or amend these Terms (including the charges) from time to time and such changes shall be communicated to the Client on the Bank's Website, but individual communication shall not be sent to the Client. The Bank may publish notices of general nature, which are applicable to the Clients, on Bank's Website or on its notice board or in any other mode as may be decided by the Bank. Such changes would have the same effect as a notice served individually to each Client.

The Client may within a period of fifteen (15) days from the date such change of Terms is published on the Bank's Website issue a notice to the Bank to discontinue availing of Services, failing which the Client shall be deemed to have accepted the change from the date on which such changes were notified on the Website of the Bank. The Bank will have to abide by the applicable rules and regulations issued by its regulators, agencies working under the aegis of the regulator / governmental / self-regulatory and such other bodies and institutions which are involved in the processing of Trade Transactions and the Client agrees that it shall also be required to abide by such rules and regulations issued by such authorities as specified above, from time to time.

At the Client's request, and subject to these Terms together with the Schedules, having been accepted by the Client, the Bank has agreed to offer the Trade Services to the Client under these Terms without having any obligation to assume any credit exposure on the Client.

### **1. INTERPRETATION**

In these Terms, unless the context otherwise requires: (i) all capitalised terms shall have the meaning ascribed to them either in the body of these Terms or in the definitions set out in the **Annexure A** hereto; (ii) the singular includes plural, and vice versa and words of any gender are deemed to include the other genders; (iii) for the sake of convenience "Client" in these Terms is being referred to in the masculine gender and the meaning Client shall be constructed so as to mean and include (a) where the Client concerned is an individual or a proprietorship firm, his/her heirs, executors, administrators and permitted assigns/ permitted transferees; (b) where the Client concerned is a partnership firm for the purposes of the Indian Partnership Act, 1932, the partners or partner for the time being of the

said firm, the survivors or the survivor of them and their heirs, executors and administrators of the last surviving partner and permitted assigns/ permitted transferees; (c) where the Client concerned is a Hindu undivided family, the member or members for the time being of the said Hindu undivided family, and their respective heirs, executors and administrator and permitted assigns/ permitted transferees; (d) where the Client concerned is a Company within the meaning of the Companies Act, 2013 or a Limited Liability Partnership, incorporated under the Limited Liability Partnership Act, 2008, its successors in title and permitted assigns/ permitted transferees; (e) where the Client concerned is an unincorporated body, all the members of such body and their respective successors and permitted assigns/ permitted transferees; (f) where the Client concerned is the Governing Body of a Society, its respective successors and the members of the Governing Body and any new members elected, appointed or co-opted and permitted assigns/ permitted transferees; (g) where the Client concerned is the Trustees of the Trust, their successors and permitted assigns/ permitted transferees; (iv) the terms "hereof", "herein", "hereby", "hereto" and derivatives or similar words refer to these Terms; (v) references to the word "include" or "including" shall be construed without limitation; (vi) reference to any article, clause, annexure or schedule means an article or clause of, or an annexure or schedule to, these Terms; (vii) reference to any Law/s, Regulation, Exchange Control Laws or any reference to a particular ICC Rules or to any provision thereof shall include references to any such Law/s, legislations, rules, Regulations and publications as it may, after the date hereof, from time to time, be amended, supplemented or re-enacted, and any reference to a statutory provision shall include any subordinate legislation made, from time to time, under that provision; (viii) any reference to person includes any individual, firm, partnership, limited liability, corporation, company agency of state or central government, or any association, trust, joint venture, consortium or any other entity whether or not having juristic personality or perpetual succession (ix) references to these Terms herein and like terms shall include the Schedules and Annexures and references to clauses and paragraphs are to clauses and paragraphs in these Terms, Schedule and Annexure respectively unless otherwise stated; (x) The Application Form and any other forms/letters executed by the Client or the Bank, as the case may be, shall be an integral part of these Terms and shall be read in conjunction with these Terms; (xi) the Bank shall be entitled to alter/ vary/ modify any of these Terms and any letters issued by or to the Bank in relation to the Trade Services shall be read in conjunction with these Terms; (xii) In the event of there being a direct conflict between any of the letters and these Terms, then the provision of the latest letter (only to the extent specifically agreed between the parties and to the extent directly in conflict with these Terms) shall prevail; (xiii) Clause headings are inserted for convenience and shall not be deemed to affect the interpretation of these Terms; (xiv) The definitions used in a particular Annexure to these Terms, shall be used for interpretation of the contents of such Annexure and in the event of a conflict, the definition given in the Annexure shall prevail over the definition given

in these Terms; (xv) undefined terms shall have the meaning as per the relevant ICC rules and (xvi) In these Terms, unless the context otherwise requires, the Bank and the Client shall hereinafter be jointly referred to as the "Parties" and individually as the "Party".

## **2. REPRESENTATIONS AND WARRANTIES**

2.1 The Client represents and warrants that it is; i) duly organized under the existing Law/s, validly existing, and in good standing; ii) authorised to sign these terms and conditions, and these Terms are valid and create a binding obligation on the Client, enforceable in accordance with its terms; and consenting to these Terms, availing Trade Services, execution and performance of Trade Transactions by the Client under these Terms is lawful and does not constitute a default, acceleration or termination of any other agreement to which the Client is a party or breach of any Law/s, judgment, decree, order or award; iii) the sole owner of all Assets shown on the Client 's financial statements delivered to the Bank save and except as stated in the said financial statements; iv) solvent and capable of paying its obligations as and when they become due; v) in compliance with all applicable Law/s including the Law/s applicable to its constitution; vi) all authorisations required for agreeing to these Terms including those required under its Constitution Documents and for performing and observing obligations herein stated and the transactions pursuant hereto have been obtained and are in force, and these Terms and all transactions pursuant hereto are and will be in accordance with all applicable provisions of Law/s; vii) a fact that it has not, and none of its partners, members, trustees, directors, officers, agents or employees has/have, committed or omitted to do any act or thing the commission or omission of which is in contravention of any Law/s including any applicable pollution control or environmental Law/s; viii) a fact that it has not, and none of its partners, members, trustees, directors, officers, agents or employees are in default or have committed a breach of any agreement with any person who has provided loans or deposits or advances or guarantees or other financial facilities to the Client or at the Client 's instance; ix) a fact that the Client and / or none of its partners, members, trustees, Directors have been included in any list of defaulters by any regulatory / Statutory Authority and/or banks and/or financial institutions and/or Non Banking Financial Companies etc; x) a fact that it duly owns or holds all other material consents, licences, franchises, permits and authorisations necessary for the lawful conduct, ownership and operation, of its businesses, and the same are valid and subsisting and have not become voidable.

### **2.2 Additional Representations and Warranties for availing the Trade Services:**

#### **I. Submission of information and Documents**

##### **The Client represents and warrants that;**

i. it is aware of the fact that the Bank has an obligation to provide the required documents in relation to the Trade

Transactions concluded, to various Statutory Authorities, courts and/or tribunals and the Client hereby unconditionally agrees to send the Documents underlying the Trade Transactions that are required to be provided to the Bank which are related to the origination of the Trade Transaction. The Client hereby specifically agrees that it will within 48 hours of a request being sent by the Bank, provide the Documents underlying the Trade Transaction to the nearest branch of the Bank or to any address as may be communicated by the Bank from time to time, by duly mentioning the transaction reference number that is generated for such Trade Transaction. The Client also agrees to upload the scan copy of the Documents underlying the Trade Transaction by such other electronic means as may be intimated by the Bank and agrees to keep the said Documents underlying the Trade Transaction in trust and as an agent of the Bank for the similar time period for which the Bank ought to keep the records of such Transactions. The Client agrees that it shall share the Documents underlying the Trade Transaction as and when called for by the Bank or when the same are required to be provided to any Statutory Authority. In case the Company is informed that the Documents underlying the Trade Transaction are required to be provided to any Statutory Authority, in such a case the Company shall keep such documents until closure of such inquiry / proceedings/ litigation.

ii. It is aware that processing of transactions by the Bank include, dealing with Correspondent / Foreign banks, intermediaries and agents of the Bank in various jurisdictions. Hence the transactions are exposed to various risks including but not limited to sanctions, exchange rate risks, conversion risks, monetary risks, currency cut off timings, individual cut off timings of the Bank, its Correspondent/ Foreign banks, intermediaries and agents in the relevant jurisdiction and relevant jurisdiction specific risks like political, legal and regulatory

iii. the Client shall give such information / documents as will be required to satisfy the Bank about the Trade Transactions to be undertaken or undertaken. In the event the Client refuses to comply with any such requirements or makes any unsatisfactory compliance therewith or at a later date it is found by the Bank that the Trade Transactions were not in compliance (actual or alleged) with any Law/s or Regulation or the Client or the Bank is subjected to any proceedings / investigation / questioning by any investigation agency or Statutory Authority or any other regulatory authority , then the Bank shall have the power to refuse in writing to undertake any further Trade Transactions and discontinue / recall the Facility extended to the Client and to report such Trade Transaction / non-compliance to such statutory or regulatory or investigation authorities, if the Bank has reason to believe that any such contravention / evasion / non-compliance requires submission of report to such authorities.

iv. The Bank and its service providers are required to act in accordance with the Law/s and Regulations of various jurisdictions, including those which relate to Sanctions, Exchange Control Law/s, controls / restrictions on any import or export, prevention of money laundering, terrorist

financing, bribery, corruption and tax evasion and therefor at any time, the Bank may require the Client to immediately provide to the Bank information related to any Trade Transaction, including the Documents underlying the Trade Transactions or such other documentation as the Bank may require.

v. The Bank may take, and may instruct other group members of the Bank to take, to the extent it is legally permitted to do so under the Law/s of its jurisdiction, any action (a "**Compliance Action**") which it considers appropriate to act in accordance with Sanctions or any other domestic and/or foreign Law/s and Regulations. Such a Compliance Action may include:

- a. the interception and investigation of any payment, communication or Instruction pertaining to the Trade Transaction; and/or
- b. making of further enquiries as to whether a person or entity is subject to any Sanctions or export control restrictions; and/or
- c. the refusal to: (A) issue, renew, extend, transfer or assign any Trade Transaction; (B) make payment of any claim under a Trade Transaction; or (C) process a Trade Transaction or Instruction that does not conform with Sanctions, export controls or any other domestic and foreign Law/s or Regulations;

vi. Neither the Bank nor any of the group member of the Bank shall at any point of time be liable to anyone for any loss, damage, delay, or failure of the Bank to perform its duties under the Trade Transaction:

- a. arising out of or relating to any Compliance Action taken by the Bank, its service providers, or any group member of the Bank; and/or
- b. for being prevented from paying any claim in respect of a Trade Service or sending or receiving any message or data or taking any other action in connection with any Transaction because of any Law/s, Regulation or ruling of any Statutory Authority, courts and/or tribunals.

## II. Sanction Laws

i. Neither the Client nor any of its subsidiaries, partners, members, trustees, directors, officers, employees, agents, or affiliates is a person or entity that is, or is owned or controlled by any person or entity or the persons / entities involved in the Trade Transaction/s, nor any other person/ entity benefiting howsoever in any capacity, either directly or indirectly, from or in connection with the Trade Transaction is a Specially Designated National ("**SDN**") and Blocked Persons and/or otherwise sanctioned under the sanctions (and related Law/s) promulgated by the United States of America (including the OFAC (Office of Foreign Assets Control)), India or by Reserve Bank of India or any other Regulatory or Statutory Authority or court or tribunal), United Nations, European Union, and/or any other country (collectively, the "**Sanctions**") or located, organised or resident in a country or territory that is, or whose government is, the subject of Sanctions. If the Trade Transaction involves linkage with any SDN and Blocked Persons /countries listed

under OFAC/ Financial Action Task Force ("**FATF**") in any manner, Client hereby undertakes not to hold the Bank responsible for any of its action or inaction in respect of the OFAC/SDN/FATF-linked Trade Transactions.

ii. All required import or export licenses applicable to each Trade Transaction have been obtained and, the Client is aware that the Bank may require an import / export license or other authorisation for the provision of the relevant Transaction, the Client shall submit the Bank copy of such licenses or other authorisation prior to the provision of the Trade Transaction.

iii. The Client is compliant in all material respects with foreign and domestic Law/s and Regulations pertaining to each jurisdiction in which it operates and to each Trade Transaction and the subject matter of such Trade Transaction including, if applicable, the shipment and financing of the goods described in such Trade Transaction or the trade documents and associated documents.

iv. Client does not have any legal incapacity or lack of authority to enter into the Transactions.

The representation and warranties in the Clause 2.2 (II) above shall survive the execution of the Transaction.

## III. Compliance with Exchange Control Laws

The Client understands that in addition to the above, the Trade Services are subject to various Exchange Control Laws. The Client undertakes to comply with any and all applicable Law/s whether foreign or domestic in relation to the Trade Transactions undertaken by it with the Bank in relation to shipment or Drafts drawn under the said Trade Transactions or purporting to be so drawn in relation to such Trade Transactions.

In this regard, the Client confirms that it is in compliance with FEMA (Foreign Exchange Management Act, 1999) including any statutory modifications re-enactments thereof from time to time, rules and Regulations issued by Indian Banks Association, Foreign Exchange Dealers Association of India, Stamp Laws and other legislations by various State / Central / Municipal governments, Circulars and Regulations issued by Reserve Bank of India, Directorate of Import and Export, Customs and other Statutory Authorities and Governmental agencies. Further, the Client specifically hereby gives the declaration as is required under Section of 10(5) of FEMA 1999 that all Trade Transactions involving foreign exchange including those undertaken for hedging the foreign exchange risk with the Bank will not involve or designed for any contravention, evasion of the FEMA provisions including the rules, Regulations and Circulars that may be issued thereunder from time to time. The Client irrevocably agrees to give such information and documents as will reasonably satisfy the Bank about the transactions and

further understands that the Bank is entitled to report the matter to the Reserve Bank of India for any unsatisfactory / non-compliance of the FEMA provisions or if it has a reason to believe that any contravention / evasion is contemplated.

### 3. COVENANTS / CONDITIONS

3.1 **The Client undertakes and expressly agrees** that i) the Trade Transactions that are undertaken by the Bank will be used for the purposes that are stated in the Application Form or Instructions; ii) the Bank may in its sole discretion securitise or assign or transfer its rights, title and interest in the Trade Transactions to any other person by way of securitisation or assignment, and may request the Client to make payment directly to the assignee or in favour of any other person as may be prescribed by the Bank; iii) any non-compliance with these Terms will be treated as an Event of Default and without prejudice to any other rights of the Bank, would lead to acceleration of the repayment of the entire Facilities, which the Client would be required to repay immediately; iv) it shall not guarantee or pay or provide any collateral for obligations of others without intimating the Bank in writing; v) it confirms that so long as the Client continues to be indebted under the Facilities, the Client shall not without prior intimation to the Bank borrow any moneys from any other bank or from any other source whatsoever and whomsoever apart from temporary loans obtained in the ordinary course of business and shall so be conveyed by the Client to the Bank; vi) without the prior intimation to the Bank, the Client shall not enter into, or be a party to, any transaction with any affiliate of the Client, except in the ordinary course of and pursuant to the reasonable requirements of the Client's business and upon fair and reasonable terms which are fully disclosed to the Bank in advance; vii) no change whatsoever in the constitution of the Client, regardless of whether the same is with or without the consent of the Bank, shall impair or discharge the liability of the Client to the Bank hereunder; viii) it shall not dispose of its Assets or compromise with any of its creditors without prior intimation to the Bank; ix) the Client shall comply with the covenants relating to maintenance or improvements of financial ratios relating to the balance sheet structure and profit appropriations as specified by the Bank; x) it agrees to accept as conclusive proof of the correctness of a statement made out from the books of the Bank and sent by the Manager/Agent/Accountant and/or other duly authorized officer of the Bank or any sum claimed to be due from the Client to the Bank under this Facility, (if not so refuted by the Client within a period of 7 days from receipt of the same); xi) it consents to the disclosure by the Bank, of information and data relating to the Client, of its accounts and of the Facilities availed or to be availed by the Client, obligations assumed or to be assumed by the Client in relation thereto and default, if any, committed by the Client in discharge thereof, as the Bank may deem appropriate and necessary, to its affiliates, group companies, other creditors, any outside agency, credit rating agency Credit Information Bureau (India) Ltd. or any other agency authorized in this behalf by RBI to other banks and lenders including assignees and

potential assignees, to its professional advisers and consultants and to its service providers instructed by it in relation to the Facilities, and/or as required under Law/s or any applicable regulation, at the order of a court of law, or at the request or order of any Statutory Authority, court and/or tribunal with whom it customarily complies and all others who may request the Bank for such information xii) it shall inform the Bank of any Event of Default immediately within 24 hours on happening of the same and shall not without first paying all the amounts due and payable under the entire Facilities, take up any insolvency / bankruptcy proceedings of its own or any arrangement of creditors or compromise with creditors and shall inform within 24 hours immediately after the first knowledge about any notice received or information relating to the potential or actual filing of proceedings under Insolvency and Bankruptcy Code; xiii) it shall conduct its business operations in compliance with all applicable Law/s and shall pay all taxes statutory / regulatory / otherwise other obligations when due; xiv) it authorises the Bank or its assigns or duly appointed agent to investigate the Client's creditworthiness and to obtain information about the Client, the Client's Assets, the Client's financial condition whenever the Bank determines it to be necessary; xv) it will execute and deliver to the Bank such further agreements, undertakings, declaration, assurances and writings as the Bank may from time to time require in relation to the Facilities and/or these Terms; xvi) it will make all payment due on their respective due dates; xvii) it shall if so required by the Bank allow the Bank, its officers, agents and nominees and/or qualified auditors and/or technical experts and/or management consultants as may be appointed by the Bank to inspect or audit such books of accounts, registers, books and documents and also furnish to the Bank at such intervals as the Bank may direct from time to time a schedule or copy of all the entries which shall have been made in such books; xviii) all representations and warranties of the Client in these Terms shall survive the execution, delivery and termination of these Terms, the consummation of the transactions contemplated hereby and the repayment of the amounts due under the Facilities and/or the Client's Dues hereunder; xix) it shall submit to the Bank periodically as required by the Bank copies of the Balance Sheet and Profit and Loss Account duly audited by a reputable firm of Chartered Accountants acceptable to the Bank, within 90 days from the close of the financial year and stock statements in the formats as may be prescribed by the Bank from time to time indicating correctly the quantity and value of the stocks and also statements of receivables indicating the names of the debtors, amounts of the debts and the periods for which they are outstanding together with a certificate that the quantities and amounts stated are correct and that all stocks are fully covered by insurance unless such insurance is waived by the Bank and all the details relating to the import and export transactions or any other trade transactions which are required to be submitted by the Client to the Bank in relations to the processing of the Trade Transaction/s or as may be required by Law/s or Regulations; xx) in case the Client has an occasion to apply to the Bank for any advances or other credit facilities at any branch, the Client

shall make a full disclosure of all the then existing advances/ facilities, secured or unsecured, granted to the Client by the Bank or by any of its affiliate/associate companies or by any other bank/ person/ entity; xxi) the Bank will have to abide by the applicable rules and Regulations issued by the regulators, agencies working under the aegis of the regulator / governmental / self-regulatory and such other Statutory Authorities and institutions which are involved in the process of payments and settlement systems in India and the Client agrees that it shall also be required to abide by such rules and Regulations issued by such authorities as specified above, from time to time. The Client agrees that opening and maintenance of the Bank Account and availing of Trade Services is subject to the terms and conditions applicable to such accounts, policy of the Bank and the rules and Regulations introduced or amended from time to time by the Reserve Bank of India ("RBI") as amended from time to time and/or any other authority having actual or purported jurisdiction or authority over the Bank.

#### 4. EVENTS OF DEFAULT

4.1 If the Client shall fail to carry out and perform any of the obligations or commit breach of any of the terms, covenants, representations and warranties hereof or the Bank in its sole judgement feels that the Client cannot perform or is incapacitated to perform its obligations under any sanction letter issued to the Client, then the Bank shall treat such an event as an Event of Default. On the question whether any of the events, matters or circumstances mentioned herein have or has occurred, the opinion of the Bank shall be final, conclusive and binding on the Client, both in and out of court / judicial/ quasi-judicial authority. It shall not be open to the Client at any stage to question the decision of the Bank to refuse to grant the said Facilities or any part thereof which may remain to be disbursed or to recall the said Facilities.

4.2 Any of the following shall constitute an **Event of Default**:

i) if the Client fails to promptly pay any amount now or hereafter owing to the Bank as and when the same shall become due and payable; ii) if the Client fails to duly observe or perform any obligation hereunder or under any other agreement with the Bank; iii) any representation made by the Client to the Bank shall be found by the Bank to have been false at any time or misleading as of the date on which the same was made or deemed to be made; iv) threat or apprehension of or the occurrence of any damage to or loss, theft, misappropriation or destruction of any of the Assets of the Client; v) the occurrence of any event or condition which, in the Bank's opinion, constitutes or could constitute a Material Adverse Effect; vi) the Client entering into any arrangement or composition with its creditors or committing any act of insolvency, or any act the consequence of which may lead to the insolvency or winding up of the Client ; vii) execution or distress or other process being enforced or levied upon or against the whole or any part of the Client 's Assets; viii) any order being made or a resolution being passed for the winding

up/dissolution of the Client or a Receiver being appointed in respect of the whole or any part of the Assets of the Client or the Client ceasing or threatening to cease to carry on business or giving or threatening to give notice of intention to do so; ix) it being certified by an accountant or a firm of accountants appointed by the Bank (which the Bank is entitled and authorized to do at any time) that the liabilities of the Client exceed its Assets or that the Client is carrying on business at a loss; x) if the Client shall stop payment or threaten to do so; xi) the passing of any order by a Statutory Authority, courts and/or tribunals ordering, restraining or otherwise preventing the Client from conducting all or any material part of its business; xii) the cessation of business by or the dissolution, winding-up, insolvency or liquidation of the Client ; xiii) if the Client has voluntarily or compulsorily become the subject of proceedings under any bankruptcy or insolvency Law/s; xiv) any change in respect of its constitution or management or shareholding; xv) one or more events, conditions or circumstances (including any change in Law/s) shall occur or exist which in the opinion of the Bank, could have a Material Adverse Effect;

4.3 Upon the occurrence of an Event of Default the Bank shall, by notice to the Client, be entitled to accelerate, and declare immediately due and payable, all or any part of the unpaid balance of all Facilities granted hereunder together with accrued interest and all other amounts payable by the Client to the Bank and/or enforce any other remedy that the Bank may have under applicable Law/s. In addition, without notice except as specified below, the Bank shall be entitled to (i) set off and appropriate the margin money / securities and other credit balances lying in any other accounts of the Client with the Bank towards the Client's Dues and for that purpose obtain, cancel, adjust and settle losses arising out of the Trade Transactions and endorse and negotiate any documents, Drafts or instruments, in each case in the name and as agent of and attorney of the Client; (ii) deal with the goods/ chattel and/ or other material underlying the Trade Transactions to recover the Client's Dues through public or private sale, for cash or credit or for future delivery without assuming any risk including the credit risk, on such terms and for such consideration as the Bank may deem commercially reasonable and fit under similar circumstances; (iii) take any such other action which will protect the interest of the Bank in recovering the Client's Dues. In the event notice is required by Law/s, then the Client confirms that a written notice sent through e-mail and/or delivered at the Client's last known address as available in the Bank's records before two calendar days of such sale or auction shall be a reasonable notice and the Client agrees not to contest the reasonability of time in general and/or reasonableness of the time in particular, to sale or auction of any goods / chattel and /or other material underlying the Trade Transaction. The Client confirms that it shall not contest any sale or auction if any conducted or made by the Bank adopting the usual practices which the Bank adopts for liquidating any goods / chattel and /or other material underlying the Trade Transaction. The Client agrees that the Bank is entitled to add all costs and expenses (including the attorney's fees and legal charges) which are

required to be incurred by the Bank, without being liable or obligated to any risk or liability, for taking possession, custody, safety, management, auction and liquidation of any goods / chattel and /or other material underlying the Trade Transaction to the Client's Dues and the Bank shall be entitled to deduct the same from the sale proceeds of any goods / chattel and /or other material underlying the Trade Transaction.

## 5. CROSS DEFAULT

- 5.1 In addition to any general lien or other similar right to which the Bank is in Law/s generally entitled, the Bank may at its discretion use and enforce its right of set-off and Cross Default between all the Facilities sanctioned.

For the purposes of Cross Default:

**"Client's Dues"** means any indebtedness in respect of monies borrowed or liabilities contracted (including the financial obligations assumed under guarantees, Trade Transactions, indemnities etc., irrespective of whether they are invoked or outstanding or actually due or not) of Client towards the Bank and shall be deemed to include any indebtedness of any associate/affiliate of Client or a person or entity related to the Client, towards the Bank and any indebtedness of the Client and/or of any associate/affiliate of the Client or a person and entity related to Client towards any subsidiary/ associate/affiliate company of the Bank.

- 5.2 Client agrees and confirms that in addition to any general lien or other similar right to which the Bank as a banker may be entitled under Law/s, the Bank shall at all times have the right of lien and set-off and apply any and all Assets, Security, credits, money or properties of the Client in the Bank's possession or control against any obligation of the Client to the Bank or in any other account or in any other respect, whether such liabilities be actual or contingent, primary or collateral and several or joint. Client agrees and confirms that the Bank may at its absolute discretion appropriate any payments made by the Bank under the Facilities granted to it by the Bank, towards another agreement or transaction entered into by the Bank and/or towards any other indebtedness of Client and such appropriation shall be final and binding upon the Client and the Client shall continue to remain liable to the Bank for payment of dues under this Facility in respect of which such sums of money were so paid but were appropriated towards another agreement or transaction entered into by the Bank or towards another indebtedness of Client. In addition, Client hereby expressly gives the Bank the power to sell / transfer or otherwise dispose of any and all Security created in favour of the Bank under the security documents or deposited with the Bank or under its possession or control to liquidate and appropriate the same towards satisfaction of amounts due to the Bank on account of any other agreement or transaction entered into by the Bank and/ or the indebtedness of the Client. It is also agreed, acknowledged and understood by the Client that if the Bank commits a default under any Facility then such default shall be deemed to be a default of all the other

Facilities availed of by the Client, and notwithstanding anything to the contrary elsewhere contained in any writing or otherwise, be entitled with regard to all borrowings from the Bank to immediately demand the same due and payable and the Bank shall be entitled to recall all the Facilities granted by the Bank and also utilize and enforce any Security that is created or subsisting as on that date towards recovery of its dues under the Facilities.

## 6. INDEMNITY

### 6.1 Transaction Indemnity

- i. In consideration of the Bank having agreed at the request of the Client under these Terms, to issue / issuing or establishing or negotiating or undertaking various obligations or processing various Trade Transactions from time to time, the Client agrees that (except in so far as is expressly stated herein and / or otherwise agreed in any Trade Transaction), all Trade Services shall be provided in terms of the ICC Rules any amendments or any other modifications or amendments thereto for the time being in force, as if they are incorporated by reference or applied by the Bank to any Trade Transaction, read with these Terms. Further, the Client irrevocably and unconditionally agrees, confirms and states as follows:-

(a) the Bank shall be authorised to accept and/or pay against all documents to be presented under any Trade Transaction and, if applicable, all Drafts drawn under any Trade Transaction provided the same are prima facie in accordance with the terms of any such Trade Transaction;

(b) the Bank shall be authorised to accept and/or pay at maturity all Drafts drawn in accordance with the terms of any such Trade Transactions;

(c) the Bank or a Nominated Bank shall have absolute discretion as to whether or not to negotiate any such drawings or Drafts, and although any such Trade Transaction may provide that the beneficiary will draw an Usance bill/s on the Client, the Bank may in its absolute discretion, agree to negotiate the documents sent under the said Trade Transaction/s and make payment to the beneficiary of the amount of the bill/s drawn by the beneficiary upon receipt by the Bank of the said documents without reference to the Client or without obtaining the Client's acceptance of such bill(s), provided the Bank consider the same in its reasonable judgement to be in accordance with the terms of the said Trade Transaction(s). Bank's decision that the documents are in conformity with the terms of the said Trade Transaction (s) will be conclusive and binding on the Client in all respects.

- ii. The Bank or a Nominated Bank who shall make any payment or accept any Draft in consequence of any such Trade Transaction shall be bound to examine with reasonable care the Drafts and documents issued under any such Trade Transaction only to ascertain that such Drafts and documents appear on their face to be in accordance with the terms and conditions of the Trade Transaction. Without in any way limiting the foregoing, neither the Bank nor any such

officer, person, firm or company nor a Nominated Bank shall be responsible for or be required to look into:

- (a) the correctness of the description, leading marks, quantity, quality or value of the goods or of the charges as stated in invoices or bills of lading or other documents; or
  - (b) the validity, accuracy, genuineness, terms & conditions or sufficiency of any documents or of any endorsement thereon tendered; or
  - (c) the terms & conditions or sufficiency or validity or genuineness of any insurance of the goods; or
  - (d) delays, non-delivery of for any reason, a post / courier or other means through which physical delivery is made or delays, non-delivery of for any reason or errors in transmission of other mechanically or electronically transmitted messages to or from the Nominated Bank or for delays in transmission or loss of documents through the post / courier etc or for delays, loss or damage to goods; or
  - (e) errors in translation or in interpretation of technical terms or from any ambiguity in the Client Instructions; or
  - (f) the use which may be made of any such Trade Transactions or for any acts or omissions of the beneficiary/ies in connection therewith.
- iii. On arrival of the goods the Bank shall be at liberty to have them warehoused in its name and insured against fire, but without obligation on the Bank to do so, and the Bank will be in no way responsible for any loss or damage entailed through Bank's omission to so warehouse and insure.
  - iv. For the purposes of any such Trade Transaction, the date of any bill of lading shall be deemed to be conclusive of the date of shipment and the absence in any bill of lading of any positive evidence of transshipment shall, in Bank's favour, be conclusive that transshipment has not taken place.
  - v. On no account shall any claim be made against the Bank on any ground whatsoever except in case of gross negligence, wilful default or fraud.
  - vi. That all Trade Transactions undertaken, issued, negotiated or processed by the Bank shall be undertaken, issued, negotiated or processed entirely at Client's sole risk and responsibility and that the Client shall honour all Drafts presented thereunder even though the goods do not arrive or are refused landing, whether because of any quarantine, act of war or prohibition or restriction imposed by Law/s, Regulations, or by any Statutory Authority or for any other reason whatsoever.
  - vii. Notwithstanding the possibility, existence, pendency or continuance of any disputes or difference or of any arbitration proceedings or of any suit or other legal proceedings or otherwise whatsoever between the Client and the beneficiary or beneficiaries of all or any such Trade Transactions which may directly or indirectly arise out of or

under or in connection with the subject matter/s of all or any such Trade Transactions or which may affect the legality or validity of all or any of such Trade Transactions and/or of any transaction/s directly or indirectly connected with or relating to or arising out of the subject matter/s of all or any of such Trade Transactions, the reasonableness or propriety or validity of any payments made by the Bank to any such beneficiary or beneficiaries shall not be questioned by the Client on any grounds whatsoever.

- viii. No delay on the part of the Bank in exercising any power of sale or any other rights or options hereunder, and/or failure to give notice or demand, which may be given to or made upon the Client by the Bank with respect to any power of sale or other right or option hereunder, shall constitute a waiver thereof, or limit or impair Bank's right to take any action or to exercise any power of sale, or any other rights or options hereunder, without notice or demand, or prejudice Bank's rights as against the Client in any respect.
- ix. The entries in the Bank's books kept in the ordinary course of business of the Bank with regard to the payments made by Bank as aforesaid as also with regard to interest, commission, costs, charges and expenses debited shall be conclusive evidence against the Client in relation to the transactions and matters therein appearing and the Client's liability for the same as shown to be due by such entries (if not so refuted by the Client within a period of 7 days from receipt of the same).
- x. If the Bank holds a guarantee from another party guaranteeing the due performance of Client's obligations herein and does not receive payment from the Client within a period of seven days from the due date of such Drafts drawn under the Trade Transactions then the Bank shall be at liberty, without affecting its rights against the Client in any manner whatsoever, to present the Drafts under the said Trade Transactions to the guarantor without first presenting them to the Client and to accept payment from the guarantor and to handover the discharged Drafts and documents to such guarantor.
- xi. The Client irrevocably agrees and undertakes to indemnify the Bank on demand against all losses, costs, damages, expenses, claims and demands which the Bank may have paid, incurred, suffered or sustained by reason of the Bank issuing or establishing or negotiating or undertaking any obligation or processing any Trade Transaction, together with all interest, commission, costs, charges, disbursements and expenses of whatsoever nature due to or incurred or defrayed by the Bank and/or its offices and by a Nominated Bank in relation to any such Trade Transaction, in each case other than losses, costs, damages, expenses, claims and demands arising out of Bank's gross negligence or wilful default.

## 6.2 Use of Platforms – Online Trade Facility

The Bank has at the Client's request agreed to provide Online Trade Facility for doing the Trade Transactions through the net banking/ Platform offered by the Bank, or any platform provided by the Third Party Service Providers to the Bank through which the Client can directly and independently input the data and handle the Trade Transactions ("**Online Trade Facility**"). However, it may please be noted that authorization/approval of Trade Transactions in bulk under such Online Trade Facility is available for checker/authorizer only who should be an Authorised Officer and the Client hereby expressly, unconditionally and irrevocably agrees, confirms, understands and accepts the risks of authorizing/approving Trade Transactions in bulk, basis the information available and visible at the time of selection of Trade Transactions under the said Online Trade Facility and the Client agrees and confirms to avail Online Trade Facility in respect of Trade Transactions in bulk at the Client's own risk and consequence and shall not hold the Bank responsible for any loss, errors or delays thereof for any reason whatsoever. The Client shall further hold the Bank harmless and indemnified from and against all claims, losses, damages, charges, expenses, costs and consequences that could arise on account of the Bank carrying out / acting on any of such bulk authorisations and hereby authorize the Bank to debit its account in this regard and to regularize the Trade Transactions. The Client unconditionally and irrevocably agrees and confirms that Bank has provided this Online Trade Facility on the basis of this undertaking cum indemnity and transacts basis the same. This undertaking cum indemnity is in addition to and not in derogation of the terms and conditions applicable for the current account and other facility / security documentation executed by the Client in favour of/for the benefit of the Bank.

#### **A) Registration and Onboarding**

##### **i) Permission to access the System**

- a) Subject to the terms and conditions set forth herein, the Bank hereby grants the Client a limited, non-exclusive, revocable, non-sub-licensable, non-assignable, non-transferable, royalty-free, for the territory of India only, the license to access and use the System for availing the Trade Services (the "**License**").
- b) Save and except for the purposes of availing the Trade Services, all other copying, distribution or commercial use of any of the content of the Platform is strictly forbidden.

##### **B) Pre-Conditions to integration with System and access to the Platform**

###### **a) Integration**

The Client agrees and acknowledges that the access to the Platform is presently provided through the net banking Platform of the Bank. In the event in future, the access to the Platform requires integration of the Client's system with the Bank's System, then, the Bank may by itself or through its service provider integrate the System with the system of the Client, to enable the System to collate all the information/data of the Trade Transactions from the Client and to enable the Client to avail the Trade Services. The Client agrees and acknowledges that in the event such an integration is undertaken, the same shall be carried out over a mutually agreed time period and the Client shall be fully responsible for such integration and shall cooperate with the Bank and/ or its service provider and provide the Bank and/ or its service

provider such access to its systems and processes as may be requested by them for such integration.

- b) The Client acknowledges that prior to availing the Trade Services on the Platform, they have, in accordance with the specifications provided by the Bank, satisfied themselves that their systems and software are compatible with the System, they have working internet access and shall review and accept the privacy policy formulated by the Bank and/ or its service provider in relation to the Platform and/ or the Trade Transactions proposed to be conducted on the Platform.
- c) The Client acknowledges that prior to availing the Trade Services on the Platform, they have provided to the satisfaction of the Bank, documents (such as board resolutions, letter of authority, etc.) evidencing authorisation in favour of the Authorized Officer. Provided however, the Client may change their Authorized Officer from time to time by issuing a notice in writing to the Bank along with the authorisation documentation in respect of any new Authorized Officer and obtain an acknowledgement in respect of the same from the Bank at least 14 (fourteen) days prior to the proposed date of change. The Client agrees and understands that until such time the Client take all steps to the satisfaction of the Bank for notifying the change in respect of Authorised Officer and obtaining an acknowledgement from the Bank in the manner set out above, the Client shall be solely responsible and liable with respect to all the transactions conducted on the System.

##### **C) Security Procedure**

- a) Upon the Authorized Officer completing the necessary actions as set out in clauses hereinabove to the satisfaction of the Bank, such Authorized Officer shall be provided a 'User ID', 'password' or any digital certificate or any other security device as approved by the Bank (collectively, the "**Security Devices**") for accessing System, whether by the Bank itself or any service provider appointed by it. The Client shall be able to access and use the System only after such Security Devices have been allocated to it. The Client shall (and shall cause the Authorized Officer to) promptly use any updates, new releases or replacements or successor versions of the whole of or any portion of the equipment or software provided to it from time to time by the Bank. The approval and acceptance of an update/ revision/ replacement shall be deemed to be given, if the Client continues to access the System / Platform or use any Security Device subsequent to any update/ revision/ replacement by the Bank.
- b) The Client shall ensure that its' employees comply with all the security procedures and protocols as may be stipulated by the Bank including Instruction on the steps to remedy any breach of security, and shall take all the reasonable care to prevent fraudulent or unauthorised access to such System / Platforms including upon being aware, notifying immediately, through telecom followed by a writing through e-mail, about any unauthorised access to the System /Platform or unauthorised transaction on the Platform whether actual or attempted.



- c) The Client shall be responsible for safe custody of Security Devices and shall promptly notify the Bank, in writing, of a loss or theft of a Security Device or any unauthorised use of the Security Device or of the System / Platform or the account of the Client or if the Client becomes aware or suspect that any Security Device has become known to an unauthorized person. The Client shall be liable for all activities conducted or undertaken by the Authorized Officer or any other Person using the Security Devices. In the event of any breach of the security procedures relating to the System, including use of the Platform by any unauthorized person, the Client agrees that the Bank shall have the right, at its sole discretion, to immediately revoke, suspend or disable access to the System / Platform or the Security Device and/ or issue new Security Devices to the Client. For avoidance of doubt, it is clarified that the Bank shall not be liable, in any manner whatsoever, for any reason whatsoever for the wrongful or unauthorized use of the Client account on the Platform or if the Client is unable to access the System / Platform for any reason whatsoever.
- d) The Client agrees that any data received or any action taken on the Platform or through the System, through an Authorised Officer's credentials pursuant to use of the security procedure is authentic and may be relied upon by the Bank and any other person permitted to access the System / use the Platform and that the Client will not repudiate such data.

#### D) Process Flow

The Client confirms that before initiating any Trade Transaction on the Platform, the Client has clearly understood the process flow of the System / Platform in all aspects including but not limited to the processing of the transactions in the System of the Bank. The Client agrees to adhere to the System flow by furnishing the requisite inputs, details, information and documents and by following the steps and procedures in order to enable the System to process the input data. The Client shall ensure the accuracy, completeness and conformity of the data to the predefined rules and System standards of the Bank.

#### E) Placing of Instructions

- a) The Client shall provide the requisite information that is required for processing the Trade Transactions online and confirm that the trade details shared by the Client from time to time in respect of the Trade Transactions are factually correct and the Client has not concealed any information, the disclosure of which may lead to non-processing of the Trade Transaction by the Bank. The Client further undertakes and assures the Bank that apart from the Trade Transactions covered under the Online Trade Facility provided by the Bank, the Client shall not initiate any other transaction or transactions relating to the third party by using the Online Trade Facility. The Client understands that the data/information provided to initiate the Trade Transaction would be relied upon by the Bank to permit the Client to utilise Online Trade Facility and in case, there is any information that could be contrary to already provided information in the given pre-fixed format/fields (for giving information) or if there is any information, the disclosure of which may lead to non-processing of the Trade Transaction by the Bank, such information shall be

provided to the Bank in writing by sending the same to the team of the Bank working with the Client in relation to the Trade Transactions and unless specifically acknowledged by such team of the Bank in writing, the Client shall not process the proposed Trade Transactions. The Bank may, after becoming aware of the said information, refuse to process the Trade Transaction and may report the said information to any authority.

- b) Any instruction provided by/ generated on behalf of the Client on the Platform, for or in relation to any payments in respect of a Trade Transaction or such other instruction in relation to a Trade Transaction as may be permitted by the Bank to be provided by/ generated on behalf of the Client on the Platform shall, each be hereinafter referred to as a "Instructions". The Client agrees and covenants that the contents of the Instructions are true and accurate in all material respects and that any Instructions sent or purported to be sent by the Client via the System is and shall be valid and binding on the Client, and the Bank is entitled to rely thereon, irrespective of any error or fraud contained therein or the identity of the individual who sent the Instructions. The Client agrees that the act of sending a Instructions electronically in accordance with these Terms is as legally binding as if the Client had manually executed and delivered that Instructions in written form, and that the Client will not contest the validity, legally binding nature or enforceability of that Instructions. The Client explicitly acknowledges that the Bank has no obligation to inspect or view the content of Instructions conveyed through the System or Platform, and that the Bank has no liability in the event that the Client is in breach of this clause.

- c) Client understands that the Instructions once given cannot be cancelled or modified, once the same is submitted to the Bank for processing. This is because due to automation of the Trade Transactions, sometimes the transactions get executed in a straight through mechanism if all fields are filled in the Instructions. The Bank shall not be obligated to entertain any cancellation or modification request from the Client. However, if for any reason the Bank finds that the Instructions for the Trade Transaction are received but not processed then on best effort basis the Bank may considering the circumstances try to accommodate the request of the Client either to cancel or modify the Instructions without being obligated to do so and without any guarantee for implementation of such cancellation or modification.

#### F) Client unconditionally and irrevocably agrees that:

In consideration of the Bank agreeing to provide the Client Online Trade Facility to enable the Client to transact Trade Transactions including in respect of the Export Bills (non- dispatch Cases) and Direct Import Remittance transactions and maker/initiator authorised matching of Outward Remittance Messages (ORMs) / Inward Remittance Messages (IRMs) data with corresponding Bill of Entries (BoEs) / Shipping Bills (SBs) in the Import Data Processing and Monitoring System (IDPMS) / Export Data Processing and Monitoring System (EDPMS) and any regularisation thereof through Online Trade Facility, the Client unconditionally and irrevocably agrees with the Bank as follows:

- (i) The Client shall provide such information/documents as will reasonably satisfy the Bank about the Trade Transaction and understand that the Bank is under no duty to assess the prudence or otherwise or verify the veracity or authorisations of any Trade Transaction initiated by the Client through the Client's Authorised Officer using the Online Trade Facility including the requests towards matching and regularisation of data on IDPMS / EDPMS which may be initiated by the Client's Authorised Officer. The Client shall be solely responsible for the prudence or otherwise or veracity or authorisations of Trade Transactions initiated through Online Trade Facility without any liability on the Bank for any its acts or omissions pursuant to such Instructions.
  - (ii) The Client will send the documents that are required to be provided to the Bank in any Trade Transaction within 48 hours without fail to the nearest branch of the Bank or to any address as may be communicated by the Bank from time to time, by duly mentioning the transaction reference number that is generated after concluding the Trade Transaction, as the Bank as an authorised dealer has an obligation to provide the required documents in relation to the Trade Transactions concluded through the Online Trade Facility to various Statutory Authorities, courts, auditors etc.
  - (iii) The Trade Transactions that are uploaded on the Online Trade Facility do not involve, and are not designed for the purpose of any contravention or evasion of the provisions of any Law/s including but not limited to the Exchange Control Laws or any order made thereunder and the Client undertakes to furnish such information/documents as will reasonably satisfy the Bank about the Trade Transactions undertaken on the Online Trade Facility. In case the Client does not comply or refuses to comply with any such requirements or make any unsatisfactory compliance therewith or at a later date it is found by the Bank that the Trade Transactions that were undertaken are not in compliance (actual or alleged) with any Law/s including but not limited to the Exchange Control Laws or the Client or the Bank is subjected to any proceedings/investigation/questioning by Enforcement Directorate or any other Statutory Authority, then the Bank shall have the power to refuse in writing to undertake any further Trade Transactions and discontinue the Online Trade Facility extended to the Client and to report such Transaction / non-compliance to Reserve Bank of India including where the Bank has reason to believe that any such contravention/evasion/ non-compliance requires submission of report to Reserve Bank of India.
  - (iv) The Client shall share the Documents underlying the Trade Transaction as and when called for by the Bank or the same are required to be provided to any Statutory Authority or to the auditors of the Bank. In case the Client is informed that the Documents underlying the Trade Transaction are required to be provided to any Statutory Authority or to the Court/ Tribunal in such case the Client shall keep all the Documents underlying the Trade Transaction until closure of such inquiry / proceedings/ litigation. The Client understands that it may not be possible for the Bank at all times to divulge the full details of the matter in view of the statutory obligations of confidentiality.
  - (v) The Client shall not use the same Documents underlying the Trade Transaction for doing a similar transaction unless under the first Trade Transaction done with the Bank the total amount payable under it is not remitted. The Client shall ensure that the Authorised Officer or any other person (acting for the Client) does not pay any amount which is in excess of what is payable under the said Trade Transaction/s or do a duplicate / repeat / similar transaction using the same Documents underlying the Trade Transaction with any other bank or Authorised Dealer.
  - (vi) In order to process the Trade Transactions that are uploaded through Online Trade Facility, the Client will be required to pay the requisite charges to the Bank for processing the Trade Transactions. Hence, the Client hereby authorizes the Bank to debit the required charges to the account of the Client held with the Bank.
  - (vii) the Client shall scan and upload the Documents underlying the Trade Transaction by using Online Trade Facility and keep in safe custody the physical documents as an agent in trust for the benefit of the Bank for the similar time period for which the Bank ought to keep the records of such Trade Transactions.
- G) Notwithstanding the foregoing paragraph, the Bank shall not be bound to act on any Trade Transaction initiated by the Client through the Online Trade Facility, if Bank considers that processing of such Trade Transactions would or might cause the Bank to incur any liability (whether present, future or contingent) to any person or it would or might be prejudicial to the interests of the Bank and the Client understands and agrees that in such cases Bank may on best effort basis, inform the Client of any such refusal to act within reasonable time.**
- H) Obligations and Covenants of the Client:**
- a) The Client undertakes and confirms:
    - i) that all the information and documentation provided by the Client and/or its customers to the Bank for availing the Trade Services, and the documents uploaded on the Platform are/ shall be true, complete, genuine, accurate and are not fraudulent or misleading and are in compliance with Applicable Law. In the event of any change in the information provided by the Client, the Client shall promptly notify the Bank of the change and shall appropriately change the information on the Platform;
    - ii) that the Client shall only upload such information and documentation on the Platform that is directly related to the Trade Transaction and, shall not upload, host, display, modify, post, publish, distribute, update, share or transmit any commercial advertisements, information which is unacceptable to the Bank or which infringes any Person's intellectual or proprietary rights, or contains or introduces software viruses or any other computer code,

files or programs designed to interrupt, destroy, damage or limit the functionality of or negatively interfere with any computer resource including any use of the System.

- iii) to maintain and preserve information, records, Documents underlying the Trade Transactions undertaken on the System during the Term and for a period of 10 (ten) years after the expiry or termination of these Terms. The Client shall make these records available to the Bank and/ or its agents including for the purposes of complying with an order or any Governmental Authority upon request during the continuance of the Trade Services and even after the expiry or Termination.
- iv) to comply with all processes specified by the Bank under these Terms and other instructions that the Bank may issue from time to time in respect of use of the System.
- b) The Client shall fulfil all its obligations including any payment obligations including but not limited to additional late payment charges in case of payment delays that may be levied by the Bank in respect of any Trade Transaction in a timely, diligent, competent and professional manner. Further, the Client agrees that the Bank may report the Client and its customers, to any entity including RBI, any other statutory/ regulatory authorities, including the regulated entities of RBI or any other regulatory authorities, including credit rating agencies as may be required by Applicable Laws.
- c) The Client shall not, in any shape or form, use the System to infringe upon the commercial interests of the Bank, including, but not limited to, the posting of any commercial advertisements or engage in any activity that may adversely impact the Bank, or the normal operation of the internet or cellular network or of the System.
- d) The Client agrees and confirms that the Bank is providing the online Platform for facilitating and recording the Trade Transactions and the Client explicitly permits the Bank (without any obligation on the Bank to do so) to send notifications, confirmations and other communications (either on the Platform or by way of electronic mail, text messaging or any other form), whether by the Bank or on behalf of the trade counterparties to various Persons in respect thereof with respect to the Trade Transactions, and that the Bank shall not be liable in any manner for any default of the Client or any other Person in connection with the Trade Transactions undertaken on the Platform. The Client shall treat all such communications received by it, to be duly made by the respective Parties.
- e) The Client understands that the Bank is not providing any advice on the Trade Transactions and the Bank does not represent that any transactions undertaken by the Client on the Platform are suitable for them. All transactions

effected on the Platform will be deemed to be unsolicited and all decisions taken by the Client are independent of any advice (whether written or oral), solicitation or information received by the Client from the Bank.

- f) The Client understands and accepts that any third party reports, studies, market information, materials and analysis made available on the Platform or any external web links mentioned on the Platform are not under the control of the Bank and that the Bank does not endorse or take any responsibility for the accuracy or reliability of any such third party reports, studies, market information, materials and analysis made available on the Platform and any external web links mentioned on the Platform.

#### **I) Rights of the Bank**

- a) The Bank may deactivate the Client's account without giving any prior written notice to the Client, on the Platform, either temporarily or permanently, or if no services are accessed or availed by them for a continuous period of 90 (ninety) days.
- b) Notwithstanding anything contained elsewhere in these Terms, the Bank may place any type of advertisement in any form or other type of commercial information on the Platform. The Bank and its affiliates shall also have the right to send promotional or other relevant commercial information to the Client and the Client shall have an option to unsubscribe from any such promotional or other commercial information sent by the Bank and/ or any of its affiliates.
- c) The Bank may enhance the features of the System at its sole discretion and may provide additional services through the System to the Client or any other Persons.

#### **J) Disclaimers and Limitation of Liability**

- a) THE SYSTEM AND THE SERVICES ARE BEING PROVIDED ON AN AS IS WHERE IS BASIS AND ANY TRADE TRANSACTION PROCESSED BY THE BANK SHALL BE AT ITS SOLE DISCRETION. THE BANK DISCLAIMS, IN RELATION TO THE SYSTEM FOR AVAILING THE TRADE SERVICES OR OTHERWISE, ALL WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE BANK OR ITS EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE BANK'S OBLIGATIONS. THE BANK DOES NOT WARRANT THAT THE SERVICES WILL MEET THE CLIENT'S REQUIREMENTS OR THAT THE SYSTEM'S OPERATION WILL BE UNINTERRUPTED OR ERROR FREE.

- b) The Client acknowledges and consents that the System is a computer network-based service which may be hosted on a third party's cloud which has been developed and is being maintained by such third party and that the System may be subject to downtimes, outages and delay occurrences.
  - c) It is clarified that users of the Platform including the Client can input data into the Platform which may be visible to other users of the Platform and the Bank does not endorse or take responsibility for accuracy or reliability of any such information or data which is input into the Platform by the users of the Platform.
  - d) No information on the Platform shall be construed as a representation by the Bank with respect to the legality or commercial viability of any transaction undertaken by any Persons on the Platform.
  - e) The Bank shall not be liable for any third-party fees, professional fees, costs, charges or expenses incurred by the Client for accessing the System and/ or for availing the Trade Services through the Platform; any losses, damages or injury caused to the Client by any performance, failure of performance, error, omission, interruption, deletion, defect, outage, delay in operation or transmission, computer virus, link failure, site crash, malfunctioning of software/hardware, unavailability of network, communications line failure, theft or destruction of the System, or misuse of information or unauthorized, interrupted or discontinuous access to the System, any repairs or maintenance of or on the System; data breach while it is being transmitted to or from the System or during any other transmission; accuracy or reliability of any information, offers, opinion, advice or statement made on the Platform by any Party; anything done or omitted to be done by it acting in good faith; any losses suffered by the Client due to its use of the System; delay in execution of the applicable documents; any direct loss to Client or any third party in any manner for any special, non-compensatory, consequential, indirect, incidental, statutory or punitive damages of any kind, including, without limitation, for lost profits, lost business, lost revenue or goodwill, loss of any software or data, or loss of use of any hardware, software or data, regardless of the form of action, whether in contract, tort, negligence, strict product liability, or otherwise, even if the Bank has been informed of or is aware of the possibility of any such damages in advance.
  - f) The limitations set forth above shall be deemed to apply to the maximum extent permitted by Applicable Law and notwithstanding the failure of the essential purpose of any limited remedies. The Parties acknowledge and agree that they have fully considered the foregoing allocation of risk and find it reasonable, and that the foregoing limitations are an essential basis of the bargain between the Parties.
- a) The Client shall defend, indemnify and hold harmless the Bank and its affiliates, employees, directors, officers and agents acting within the scope of their authority (each an "**Indemnified Party**"), from and against any and all Claims, liabilities, losses, Taxes, damages, costs and expenses, including attorneys' fees and disbursements, other dispute resolution expenses (including fees and expenses in preparation for a defense of any investigation, litigation or proceeding) and costs of collection (collectively, "**Losses**"), including, without limitation, Losses (i) relating to the enforcement of this indemnity or (ii) arising out of or in any way relating to (a) Bank's reliance on any Instructions sent by the Client using the System (including any Instructions which the Bank believes in good faith was sent by the Client irrespective of any error, fraud or the identity of the Person who sent it), (b) any breach of the Client's representations, covenants or obligations under this Terms, or (c) any suit, demand, claim or other dispute (made or initiated by the Client or any other third party) with respect to a transaction entered into by the Client using the System.
  - b) It is hereby explicitly clarified that the Bank shall not be liable for any Losses arising out of or relating to any of its actions or omissions to act hereunder.
  - c) The indemnification rights under these Terms are independent of, and in addition to, such other rights and remedies as the Bank may have at law or in equity or otherwise, including the right to seek specific performance, rescission or other injunctive relief, none of which rights or remedies shall be affected or diminished thereby.
  - d) This clause of Indemnity shall survive the termination of Trade Service Facility or termination of any Facility or business relationship with the Bank in respect of the Trade Transactions conducted.

**L) Intellectual Property:**

- a) The Client acknowledges that all rights, title and interest in and to the System, including without limitation, all Intellectual Property Rights, are vested, and shall remain vested, in the Bank, its service providers and/or its licensors. Except as expressly set forth in these Terms, the Client shall have no other right (including any ownership right or intellectual property right), title or interest to or in the System, or any portion thereof.
- b) The Client shall not, and shall not allow any other party to: (a) reverse engineer or attempt to extract the source code of the System's software; (b) create or register any (i) businesses, (ii) URLs, (iii) domain names, (iv) software application names or titles, or (v) social media handles or profiles that include the Intellectual Property Rights or any confusingly or substantially similar mark, name, title, or work; (e) cause or launch any programs or scripts for

**K) Cost, Indemnification and Limitation**

the purpose of scraping, indexing, surveying, or otherwise data mining any part of the System or data; or (f) aggregate or share the Bank's data with third parties.

#### **M) Use of Third party Service Providers Platforms**

- i. The Client acknowledges and agrees that:-
  - a. in view of the technological developments, it may not be possible for the Bank at all times to provide the Trade Services on Bank's own System / Platforms and hence the Bank may rely on the platforms provided by independent Third party Service Providers (TSP) for processing the Trade Transactions.
  - b. in addition to these Terms, the provision of any services by the Bank is further subjected to the terms and conditions as may be prescribed by TSPs for utilising the platforms and agrees to pay the charges, if any, payable by the Client to such TSPs.
  - c. in the process of providing Trade Services through the TSPs, Client's information may be available to the TSP or may be assessed by the TSP for their computing and communication systems and the Client confirms that it has assessed the security arrangements of the platform and is satisfied that the same is adequate to protect the interests of the Client.

The Client acknowledges and confirms that the Bank shall not be liable, at any time for any direct or indirect damages from the use of or inability to use the platform of TSPs for execution of transactions, or unable to perform any act or omission as a result of using the platform of TSPs or for any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communications line failure, theft or destruction or unauthorized access to, alteration of, or use of information, breach of Digital Personal Data contained on the TSP's platform, irrespective of whether such non-availability of the platform is owing to the technical issues between the Bank and platform or between the platform and the Client or between the Bank and Client. No representations, warranties or guarantees whatsoever are made by the Bank as to the accuracy, adequacy, reliability, completeness, suitability or applicability of the platform provided by the TSP.

- ii) The Bank shall not be liable, at any time for any direct or indirect damages from the use of or inability to use the platform of the TSP for e-execution of documents, or any of its contents, or from any act or omissions as a result of using the TSP platform or any such contents or for any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communications line failure, theft or destruction or unauthorized access to, alteration of, or use of information, breach of Digital Personal Data contained on the TSP's platform. No representations, warranties or guarantees whatsoever are made by the Bank as to the accuracy, adequacy, reliability, completeness, suitability or applicability of the services provided by any TSP.

#### **N) Liability of the Bank for TSPs and TSP platforms**

a. The Client further agrees that the TSP appointed by the Bank to provide the Online Trade Services to the Client will be the agents of the Client and Bank in no way provides any warranty or guarantee (expressed or implied) of their service or performance. The Bank shall, under no circumstances whatsoever be liable or responsible to the Client for any defect/deficiency/delay/damages/losses caused to the Client due to any act or omission on the part of TSP for any direct or indirect loss or damage which the Client may incur or suffer in connection with using TSP platform, whether or not the likelihood of such damages was known or contemplated by the Bank.

b. Bank and its affiliates, subsidiaries, employees, officers, directors and agents, expressly disclaim any liability for any deficiency in the services offered by the TSP on its webpage (hereinafter referred to as "Third Party Page"). Neither Bank nor any of its Affiliates nor their directors, officers and agents be liable (a) in the event of any deficiency in the services of the TSP to whom the Third Party Page belongs, failure or disruption of the Third Party Page, or resulting from the act or omission of any other party involved in making the Third Party Page or the data contained therein available to the Client, or from any other cause relating to the Client's access to, inability to access, or use of the Third Party Page. (b)The Third Party Page is a TSP controlled website, the accuracy, correctness or completeness of the information, materials, services or the reliability of any service, advice, opinion, statement or other information displayed or distributed through it, is not warranted by Bank. The Client understands and acknowledges that availing of any services offered on the Third Party Page, sharing of information with the TSP or any reliance on any opinion, advice, statement, memorandum, or information made available by the TSP on the Third Party Page, shall be at the Client's risk and the Client shall be solely liable in this regard.

c. The Bank accepts no responsibility and will not be liable for any loss or damage for any service failures or disruptions (including but not limited to loss of data) attributable to a system or equipment failure or due to reliance by the Bank on third party, products or interdependencies including but not limited to electricity or telecommunication.

#### **6.3 Taxes**

##### **i. Taxes and Net Payments**

- a. All payments to be made by the Client to the Bank under the Trade Transactions shall be made free and clear of and without deduction for or on account of Taxes. The Client is only allowed to make such a payment subject to the tax deduction at source on the income of the Bank if such deduction is required by Law/s and *provided* that the Client delivers to the Bank tax withholding or tax deduction certificates from a practicing chartered accountant in respect of such withholding or deduction, evidencing that such deducted taxes or withholdings have been duly remitted to the appropriate authority.

- b. In the event that the Client is required to make any other deduction or withholding (other than as mentioned in (a) above) with reference to the income of the Bank, the sum payable by the Client in respect of which such deduction or withholding is made shall be increased to the extent necessary to ensure that, after the making of the required deduction or withholding, the Bank receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

## ii. Tax Indemnity

The Client indemnifies and agrees to keep indemnified the Bank against any such payment or liability arising or in any relation to Taxes (other than income tax) or otherwise in relation to any sum received or receivable pursuant to the Trade Transactions or the transactions contemplated or consummated using the Trade Services, as are required to be borne by the Client, together with any interest, penalties, costs and expenses payable or incurred in connection therewith.

## iii. Notification by the Bank

The Bank intending to make a claim under this clause (i.e. Tax Indemnity clause) shall notify by delivering a notice to the Client setting out in reasonable detail the basis of such claim.

## iv. Notification by Client

If at any time, the Client is required by Law/s to make any deduction or withholding from any sum payable hereunder (or if thereafter there is any change in the rates at which or the manner in which such deductions and withholdings are calculated), the Client shall forthwith notify the Bank thereof.

## V. Receipt

The Client shall deliver to the Bank within 3 (three) Business Days of receipt (or such other period as the Bank may agree) a copy of the receipt, if any, issued by the applicable taxation or other authority evidencing the deduction or withholding of all amounts required to be deducted or withheld from such payment or (if the Client fails to provide a copy of such receipt) such other evidence as may be requested by the Bank.

### 6.4) Fax and Email Indemnity - Indemnity for accepting Instructions through fax/ email or any other electronic mode of transmission of data

- i. **Electronic Communication:** Any communication sent by the Client, including but not limited to, containing messages, mandates, directions, documents/paper, faxed or scanned documents relating to through facsimile (fax), email, or by any other electronic mode of transmission, to the Bank or to be made between the Bank and the Client under or in

connection with any Trade Transactions may be made by fax, electronic mail or other electronic means if:

- a. the Bank and the Client notifies the other in writing of its fax number or electronic mail address and/or any other information required to enable the sending and receipt of information by that means;
- b. the Bank and the Client notifies the other of any change to its fax number or e mail address or any other such information supplied by them; and
- c. the Client agrees that, unless and until the Bank notifies the Client to the contrary, fax, electronic mail or other electronic means shall be an accepted form of communication.

- ii. The Client hereby requests and authorises the Bank, from time to time (at the Bank's discretion), to rely upon and act or omit to act in accordance with any Electronic Communication (each an Instruction) which may from time to time be or purport to be given in connection with or in relation to the Trade Transactions by facsimile/email or any other electronic mode of communication by the Client or its Authorised Officer.

- iii. The Client acknowledges that:

- a. sending information by facsimile/email or any other electronic mode of communication is not a secure means of sending information;
- b. the Client is aware of the risks involved in sending facsimile/email or any other electronic mode of Instructions;
- c. it has requested to the Bank to accept and act on facsimile/ email Instructions, as the same is for the Client's convenience and benefit only.

- iv. The Client understands and agrees that fax /internet/email is not encrypted and is not a secure means of transmission. The Client acknowledges and accepts that such an unsecured transmission method involves the risks of possible unauthorized alteration of data and / or unauthorized usage thereof for whatever purposes. The Client exempts the Bank from any and all responsibility of such misuse and receipt of information, and holds the Bank harmless for any costs, liabilities, damages, judgments, expenses, or losses that the Bank may suffer or incur due to any errors, delays or problems in transmission or otherwise caused by using the internet/email or any other electronic mode as a means of transmission. The Client further declares and confirms that the Client is aware that the Bank is agreeing to act on the basis of Instructions given by facsimile/email or any other electronic mode of communication only by reason of, and relying upon, the Client agreeing, confirming, declaring and indemnifying the Bank as done by these Terms and the Bank would not have done so in the absence thereof. These provisions shall apply to any and all Instructions whatsoever made / given / sent by

either of the parties in connection with the Trade Transactions. In case Client chooses to issue Instructions through any fax / email or in any other electronic mode instead of delivering hard copies of documents/papers to the Bank and the Bank accepts such Instructions and acts upon such Instructions sent by the Client through Electronic Communication of data, the Bank may accept and act upon faxed and scanned copies of original documents and other papers required with respect to conducting the further operations, actions in relation to the Trade Transactions. The Client shall indemnify the Bank against all losses, claims and damages which the Bank may incur on account of accepting and acting upon such Instructions and documents/papers sent by Client through Electronic Communication.

- v. The Client shall transmit Instructions, documents/papers through fax to the Bank, only to the fax number provided to it by the Bank from the fax number intimated by the Client and /or registered in the Bank's systems. Instructions through email and scanned copies of documents/papers will be sent to the Bank only through the email address intimated by the Client and /or registered in the Bank's systems, and such Instructions will be sent to Bank's designated email ids of the officials of the Bank/branch/units. Upon receipt by the Bank, each Instruction shall constitute and (irrespective of whether or not it is in fact initiated or transmitted by the Client and/or by the Authorized Officer), shall be deemed (if the Bank chose to act upon the same) to conclusively constitute the Client's Instructions to the Bank to act or omit to act in accordance with the Instructions contained therein notwithstanding that such Instruction may not have been authorised or may have been transmitted in error or fraudulently or may otherwise not have been authorised by or on behalf of the Client or the Authorized Officer or may have been altered, misunderstood or distorted in any manner in the course of communication.
- vi. Instructions sent by the Client through email, facsimile or by any other electronic mode for transmission data will be issued to the Bank only by Client's authorized signatory/ies and the Bank is not required to take any further steps to confirm such authorizations. The Bank is entitled to presume that all Instructions sent through Electronic Communication are only issued by the said authorized signatory/ies. The Client shall inform the Bank regarding the names and designations of its signatories, along with their specimen signatures, well in advance, and also of any change in such signatories and shall ensure at its end, the authority given to such authorized signatories shall be supported by requisite internal resolutions and authorisations of the Client.
- vii. The Bank is entitled to treat any Instructions sent by the Client through facsimile, email, or by any other electronic mode of transmission, as authentic and the Bank can act upon the same. The Client shall be bound by all actions taken by the Bank pursuant to said Instructions. The Client understands that all acts done by the Bank pursuant to Instructions sent by Client through Electronic Communication shall be presumed to have been done in good faith, relying solely on the genuineness and bonafides of such Instructions sent through Electronic Communication and on the presumption that the documents/papers faxed or scanned are authentic. However, in case the Bank has a reason to believe otherwise, the Bank can at its sole discretion, decide not to act upon such Instructions sent by the Client through Electronic Communication and may not rely upon such faxed or scanned documents/papers. The Bank shall not be liable and the Client shall not be entitled to make any claim over the Bank or hold the Bank responsible for any loss, claim, costs, penalties, damages, expenses and any other amounts, pecuniary or otherwise which the Bank may incur on account of Bank not acting upon such Instructions sent by the Client through Electronic Communication or not taking further required actions pursuant to the receipt of the scanned or faxed documents/papers for any reason whatsoever.
- viii. The Instructions sent by the Client through Electronic Communication or the scanned copies of the documents/papers may be unclear and illegible, or may not be clear. The Bank is at liberty not to act upon such unclear and illegible Instructions sent by the Client through Electronic Communication. The Client agrees that it shall also not bring any claim upon the Bank in the event of the Bank acting in good faith, misreading or misinterpreting such illegible and unclear Instructions/documents/deeds and acting upon it, irrespective of the fact that the Client may incur or may have incurred any loss on account of such action taken by the Bank based on such misreading or misinterpretation. Bank's decision with respect to the question as to whether any Instructions sent through Electronic Communication or any faxed or scanned document or paper was unclear or illegible on the basis of such communications received at Bank's end, shall be final and binding.
- ix. The original hard copies of any documents/papers faxed or scanned to the Bank or any Instructions issued to the Bank shall be delivered to the Bank within 5 working days (or at the earliest possible time in case of force majeure situations) of issuance of Instructions sent through Electronic Communication. Notwithstanding the aforesaid, failure on the part of the Client to ensure such physical delivery or non-receipt of such delivery by the Bank for any reason whatsoever shall not in any manner vitiate any action taken by the Bank pursuant to the receipt of such Instructions or render any action taken on such Instructions as null and void. The Bank shall not be required to follow up with the Client for receipt of such original hard copies or for receipt of the confirmation of Instructions sent by the Client through Electronic Communication. The Bank is however at liberty to discontinue accepting such Instructions sent by the Client through Electronic Communication and documents/papers sent through fax or email in the event of Client not sending the original hard copies as agreed herein. Any print out, photocopy or recording of Instructions documents/papers sent by the Client through Electronic Communication shall be conclusive evidence of issuance of such Instructions and that the documents/papers have been faxed or scanned by the Client and the Bank is not required to take any further steps to confirm authenticity of such faxed or scanned documents/papers.
- x. In consideration of Bank accepting the Instructions documents/papers as the case may be, sent by the Client

through Electronic Communication, the Client agrees that it shall from time to time and at all times indemnify the Bank and keep the Bank indemnified against all claims, counter claims, suits, litigations, penalties, damages, liabilities, losses, costs, expenses, which the Bank may incur on account of (a) relying upon and acting upon such Instructions documents/papers sent through Electronic Communication and /or through the faxed or scanned as the case may be; (b) not relying and not acting upon any unclear and illegible fax/email Instructions or Instructions received through any other electronic mode and faxed or scan documents/papers; (c) mis-reading and mis-interpreting any unclear and illegible fax/ email Instructions and/or faxed or scanned documents/papers and acting upon such mis-reading or mis-interpretation; (d) acting in good faith upon a bogus e-mail address/ fake e-mail address/forged e-mail address (or cheating by impersonation by using computer resources, including that of e-mail spoofing). The indemnities given herein and the rights, privileges, powers and remedies accrued and available to the Bank shall survive such termination with respect to all actions taken by the Bank relying upon Instructions sent by the Client through Electronic Communication and /or through the faxed or scanned documents/papers as the case may be prior to such termination.

- xi. The Bank is at liberty to terminate this Facility of allowing issuance of Instructions through Electronic Communication at any point of time, provided that Client is given a two days' notice of the same. Notwithstanding the aforesaid, the Bank is at liberty to immediately and with notice terminate this Facility pursuant to a regulatory/statutory or judicial order.

### 6.5) Reimbursement and Indemnity

- i. In consideration of the Bank agreeing to undertake to process the Trade Transactions initiated by the Client and in consideration of the Bank having undertaken the Trade Transactions based on the understanding with the Client in respect to the transaction, tax and fax cum Email indemnities mentioned in the Clauses 6.1 to 6.4 above, in addition to the specific indemnities in Clauses 6.1 to 6.4 above, the Client shall indemnify, hold harmless and hereby indemnifies the Bank, each group member of the Bank, and their officers, employees agents, attorneys and delegates (each, an "**Indemnified Party**") immediately on demand, against all direct, indirect and consequential liabilities and losses, payments, damages, demands, claims, expenses, losses due to foreign exchange rate fluctuations (as per Bank's card rate) and costs (including legal fees and fees, claims, demands and liabilities from a beneficiary or any other person on a full indemnity basis), proceedings, actions and other consequences (collectively, the "**Losses**") which any Indemnified Party may suffer, sustain or incur under or in connection with any Trade Transaction or in processing of or arising out of operational risks or the enforcement of its rights under these Terms irrespective of whether the transactions herein contemplated are consummated or not,

and for all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of, litigation or other proceeding (whether or not the Bank is a party thereto) related to or in any way connected to the Trade Transactions and/or the involvement of the Bank in relation to the Trade Transaction (including providing Facility to the Client) and/or performance of the Trade Transactions (including due to claims by a third party), and any fee, costs and remuneration paid to the consultants selected by such Indemnified party incurred in connection with any such investigation or any legal proceeding or in connection with enforcing the provisions of these Indemnities (but excluding any such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements to the extent incurred by reason of the gross negligence or wilful misconduct of the person to be indemnified, as determined by a court of competent jurisdiction), and/or as a result of any breach by the Client of the Client representations, warranties, covenants obligations and undertakings as contained in these Terms. The Company shall within 2 days of demand by an Indemnified Party pay to the Indemnified Party the full amount of the Losses.

- ii. The Client shall, upon request by any Indemnified Party, forthwith appear and defend at the Client's own cost and expense any action which may be brought against such Indemnified Party in connection with any Trade Transaction and to provide such assistance as such Indemnified Party may reasonably require.
- iii. The indemnities contained in these Terms shall not in any way be discharged or diminished, nor shall the liability of the Client be affected by reason of the Bank or any person from time to time, varying, realising terminating or releasing any of the same, or granting any time, indulgence or concession or compounding with any person, or concurring in accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment, or determining, varying, reducing or extending the terms of any Trade Transaction, or by anything done or omitted which, but for this provision, might operate to discharge or otherwise exonerate the Client.
- iv. Notwithstanding the foregoing, the Bank shall not be bound to act on any Transaction initiated, if Bank considers that processing of such Trade Transactions would or might cause the Bank to incur any liability (whether present, future or contingent) to any person or it would or might be prejudicial to the interests of the Bank. In such cases the Bank may on best effort basis, inform the Client of any such refusal to act within reasonable time.
- v. This clause of Reimbursement and Indemnity shall survive the termination of Trade Service Facility or termination of any Facility or business relationship with the Bank in respect of the Trade Transactions conducted.

### 7. CASH MARGIN



7.1 Depending on the nature of Trade Transactions undertaken or to be undertaken or in relation to the Client's Dues, the Bank may at any time in its sole discretion require the Client to place a margin in the form of cash ("**Cash Margin**") to collateralize any one or more or all the Trade Transactions undertaken or to be undertaken or in relation to the Client's Dues. The Client agrees that such Cash Margin shall not form part of the Assets of the Client as the same is kept with the Bank for appropriation towards any liability which is due or outstanding or may become due and payable in future. The Client agrees that no interest or any other amount shall be payable by the Bank in respect of the Cash Margin placed by the Client with the Bank. The Client further agrees that the Cash Margin is not a debt owed by the Bank to the Client or is repayable or refundable either in part or in full, unless the Client pays all the Client's Dues and discharges all its obligations under Facilities granted by the Bank including the dues under any and all Trade Transactions availed under the Trade Services granted by the Bank.

7.2 The Client agrees it shall not create any encumbrance or charge or security over the Cash Margin or assign or transfer the Cash Margin to anyone except the Bank and undertakes to execute necessary documents for creating any security interest in favour of the Bank, if required under the Law/s, and undertakes to do all things which are ancillary or consequential to creation of such charge viz., filing of charge, registration etc before the concerned authorities by paying the necessary fees and charges.

## **8. PLEDGE**

8.1 The Client hereby agrees to pledge all the Documents underlying the Trade Transaction, Drafts and Goods which are at any time in actual or constructive possession or control of the Bank, or held in trust for or to the order of the Bank or in the regular course of business of the Bank either for custody or for collection or for Security or for lien marking or for any other reason whatsoever. The Client undertakes to create / perfect the Security, as the case may be, at its own cost, if and when required by the Bank upon first demand. Further, the Client irrevocably agrees and undertakes that until all the Client's Dues are paid, the Client will hold all the Goods, Drafts and Documents underlying the Trade Transaction in trust for the benefit of the Bank and shall not in any way create any charge, encumbrance, security interest or transfer or assign to any other person.

8.2 The Client shall remain liable for any loss, damage or any other risk as to the Documents underlying Trade Transaction, Drafts, or Goods and ensure that they are earmarked for the benefit of the Bank and are held in trust for the benefit of the Bank. The Client hereby specifically agrees that any restriction on the right of consolidation of securities shall not apply and the Bank shall be entitled to exercise all its rights under these Terms and to take the enforcement action in the event of happening of an Event of Default.

8.3 In the event of enforcement, the Bank may with a notice of 2 days (which has been agreed to be a reasonable notice by the Client) initiate a legal process, or sell through auction either by way of public or private auction, realise, negotiate or

otherwise dispose of all or some of the Documents underlying the Trade Transaction, Drafts, or Goods which it deems expedient free from any restrictions and claims and the Client specifically agrees that the Bank shall not be responsible for any Loss, costs, expenses incurred or suffered arising of such disposal, sale, negotiation and realisation.

## **9. TRUST OBLIGATIONS**

9.1 Whilst the Client's Dues remain outstanding in respect of any Facility/ies or in relation to any Trade Transaction, the Documents underlying the Trade Transaction, Drafts, Goods etc are held by the Client or released by the Bank to the Client or its order, then in such an even the Client shall hold the Documents underlying the Trade Transaction, Drafts, Goods etc or their proceeds thereof in trust for the benefit of the Bank and shall submit the Trust receipts, if required by the Bank in the form and substance acceptable to the Bank on its first demand. Further, the Client agrees that it shall keep, Documents underlying the Trade Transaction, Drafts, Goods, sale proceeds and/or insurance proceeds thereof, etc. separate from any other property of the Client for the purpose of easy identification. The Client shall upon receipt of sale, insurance proceeds promptly pay to the Bank the monies so received.

9.2 In the event holding of Documents underlying Trade Transaction, Drafts, Goods etc. in trust is not possible due to any legal exigency, then the Client shall hold such Documents underlying the Trade Transaction, Drafts, Goods etc for the account and to the order of the Bank and in such case the Client acknowledges that the Bank may (without prejudice to its right to take possession of Documents underlying the Trade Transaction, Drafts, Goods etc. in the Event of Default) at any time take possession and dispose of the Documents underlying the Trade Transaction, Drafts, Goods etc. in the manner it may deem fit.

## **10. FEE AND CHARGES**

10.1 All costs, expenses and fees relating to the periodic valuation, inspection, insurance and protection/preservation in any other manner of the Security tendered to the Bank, all costs (including legal fees) incurred by the Bank in creation of Security, preserving perfecting or enforcing any of its rights under or in respect of these Terms, or any present or future Security and other documents including costs pertaining to conducting of mandated legal audits, CERSAI filings, title diligence, shall be borne by the Client who shall pay all costs charges and expenses (between Advocate and Client) including stamp duty, registration and other charges payable in respect of these Terms and also in respect of other security documents to be executed between the parties hereto as stipulated in these Terms and if any, penalty or charges are paid or become payable by the Bank, the Client shall pay to the Bank the amount thereof with interest thereon at the rate mentioned below in Clause 11 forthwith on demand by the Bank.

- 10.2 Any costs borne by the Bank for the above purposes and for the requisite charges levied by the Information Utility towards submission of information to it shall be recoverable from the Client and the Bank shall be entitled to debit the Client's current account for the same.

## **11. RATE OF INTEREST**

- 11.1 The Client shall be liable to pay to the Bank interest on the amounts due at the rate as may be agreed in the documents relating to the Trade Transaction at such intervals or as may be intimated by the Bank in writing from time to time and the Client shall not dispute the same.
- 11.2 The Client shall also be liable to pay tax on the interest / commission payable on the amounts due under the Facilities at the prevailing rate(s). The Client shall bear and pay any increase in the rate of tax. Where the Bank is required to pay any tax either in pursuance of a general statute or specific order of the Government or other Statutory Authority relating only to the Bank, the Client agrees, declares, confirms and affirms that any increase in the rate of interest / commission effected by the Bank as a sequel to such statute will be binding on the Client and become payable from the date it becomes effective on the Bank.

## **12. RATE OF COMMISSION**

The Client shall be liable to pay to the Bank commission at the rates agreed to between the Bank and the Client or as may be intimated by the Bank in writing from time to time on various Trade Transactions depending on the nature of the Trade Transactions and the Client shall not dispute the same. If no rate of commission is specified by the Bank or agreed by the Client, then the Client shall be liable to pay commission at the Bank's Card Rates (Standard Rates) as in force from time to time.

## **13. RIGHT TO VARY RATE OF INTEREST ON OUTSTANDINGS**

The Bank shall be entitled to vary / change the rate of interest (including any change as may be directed by Reserve Bank of India and / or any other regulatory / statutory body) from time to time or method of computation of such rate of interest or to charge an additional or penal rate and send to the Client an intimation in that regard. Upon intimation of such change / variation in the interest rates, the Client shall be deemed to have consented to such change / variation. The Client agrees / undertakes to pay interest at the rates as may be revised from time to time.

## **14. CONCESSIONAL RATE - GOVERNMENT SCHEMES**

Where interest is charged by the Bank at a concessional rate or rates because of the Facilities or on any type of Trade Transactions being granted by the Bank to the Client under the Interest Subsidy Scheme or any other scheme(s) formulated by the Government and/or Reserve Bank of India and/or any other authority from time to time, the Client agrees, declares, confirms and affirms that in the event of the withdrawal, modification and/or variation of such Scheme(s), the concessional rate or rates of interest shall

stand withdrawn and the normal rate or rates of interest of the Bank applicable at the material time to such Facilities or Trade Transactions shall become effective. The Bank shall become entitled to charge the Client such rate or rates of interest and the Client shall pay to the Bank on demand the difference between such concessional rate or rates and the normal rate or rates of interest of the Bank applicable at the material time to such Facilities or Trade Transactions. Such difference shall become due and payable by the Client to the Bank from the date the withdrawal, modification and/or variation of such Scheme(s) becomes effective. Interest shall be calculated respectively on the daily balance of such account(s) and be debited thereto on the last working day of the month or quarter according to the practice of the Bank. The Bank shall also be entitled to charge at its own discretion such enhanced rates of interest on the account(s) either on the entire outstanding or on a portion thereof as it may fix for any irregularity and for such period as the irregularity continues or for such time as the Bank deems it necessary regard being had to the nature of the irregularity and the charging of such enhanced rate of interest shall be without prejudice to the Bank's other rights and remedies.

## **15. DEFAULT INTEREST**

The Client agrees that the Bank has the right to levy a default interest in case non-payment of any amount due or upon happening of an Event of Default or the circumstances as may be stated in the Trade Transactions, or as maybe communicated by the Bank to the Client in writing, which rate shall be over and above the applicable rate of interest in respect of all the Client's Dues from the due date(s) thereof to the date of payments and/or in terms of RBI guidelines. In default of payment of interest at any point of time, the same shall be capitalized and added to the principal and shall be treated as a loan advanced to the Client by the Bank and the Bank will be entitled to charge interest at the aforesaid rate or at the varied/changed rate on the amount of the debit balance inclusive of interest not paid by the Client and hence capitalized as aforesaid. The Bank shall further be entitled to charge penal interest on such defaulted amount and to capitalize and add such amount of penal interest to the principal and interest amount due.

## **16. VARIATION AND CALCULATION**

- 16.1 The Bank shall have at its absolute discretion the right to vary the rate of interest / commission / other charges (including default interest rates) applicable to the Trade Transactions from time to time. It is herein clarified and agreed between the parties hereto that such variation shall be applicable from the date of such variation in the records of the Bank and not from the date of notice/receipt of notice by the Client. Interest shall be calculated on a 365 days year basis and in case of a leap year, on a 366 days year basis. Interest shall be calculated on a 360 days year basis for loans and advances being made in foreign currency and shall be paid in the currency of the loan.
- 16.2 Commission and other charges shall be calculated as per the Bank's standard practice as in force from time to time. Interest on all outstanding amounts (including towards

interest, commission, costs and expenses) will be computed on the daily outstanding balance at the rates specified and unless specified otherwise, on a monthly basis and payable by the Client upon charge.

16.3 Interest will be computed at the Default Interest Rate as defined herein on the amounts in default i.e. amounts becoming due and remaining unpaid (whether or not specifically demanded by the Bank), from the date of default till date of receipt of payment and realisation by the Bank of such amounts in default.

16.4 All amounts due from the Client shall be paid without any defence, set off, counter claim of any kind and in the currency in which the Client's Dues are required to be repaid on their respective dates.

## 17. LIMITATION OF LIABILITY

17.1 The Client confirms that the Bank does not assume any liability arising out of or in connection with the Trade Transactions or be liable for any loss, damages claims, demands, costs or expenses suffered or incurred by the Client irrespective of whether such loss, damages claims, demands costs or expenses are direct or indirect or consequential or owing to any omissions or commissions by the Bank but excluding the gross negligence and wilful misconduct on the part of the Bank.

17.2 The Client hereby waives all claims against the Bank including but not limited to:-

i. any commissions, omissions delay in sending the documents, payments or other information to the Correspondent Bank or Negotiating Bank or commissions or omissions of the Correspondent Bank or their insolvency;

ii. Any delay or failure to perform its obligations under the Trade Transactions due to any cause or reason beyond the control of the Bank;

iii. (a) relying upon and acting upon Instructions sent through Electronic Communication and /or through the faxed or scanned documents/papers, as the case may be; (b) not relying and not acting upon any unclear and illegible faxed/email Instructions or Instructions received through any other electronic mode and faxed or scanned documents/papers; (c) mis-reading and mis-interpreting any unclear and illegible faxed/ email Instructions and/or faxed or scanned documents/papers and acting upon such mis-reading or mis-interpretation; (d) acting in good faith upon a bogus e-mail address/ fake e-mail address/forged e-mail address (or cheating by impersonation by using computer resources, including that of e-mail spoofing); (e) ascertaining the sufficiency, correctness, or genuineness, authority of any persons signing or endorsing Instructions on behalf of the customer or beneficiary or third parties.

iv. (a) ascertaining the correctness of the description, leading marks, quantity, quality or value of the goods or of the charges as stated in invoices or bills of lading or other documents; or (b) the validity, accuracy, genuineness, terms

& conditions or sufficiency of any documents or of any endorsement thereon tendered; or (c) the terms & conditions or sufficiency or validity or genuineness of any insurance of the goods; or (d) delays, non-delivery of, for any reason, post / courier or means through which physical delivery is made or delays, non-delivery of for any reason or errors in transmission of other mechanically or electronically transmitted messages to or from the Nominated Bank or for delays in transmission or loss of documents through the post / courier or for delays loss or damage to goods; or (e) errors in translation or in interpretation of technical terms or from any ambiguity in the Client Instructions; or (f) the use which may be made of any such Trade Transactions or (g) for any acts or omissions of the beneficiary/ies in connection therewith (h) improper acts by beneficiary solvency, standing or performance of any party to the Trade Transaction consignor, consignee drawer or drawee or payee of any Draft or the service providers, who are appointed by the Bank to work as agents of the Client, like courier, carrier, insurer or any other person.

v. In the event any review or advice is given or purported to be given by the Bank or its officials with respect to any Trade Transaction, the Client agrees that the same is indicative only and not a final or conclusive review or advice and the Client confirms that it will take independent advice in relation to such matters before acting on them. Further, the Client specifically agrees to thoroughly examine all the Letters of Credit, Bank guarantees, Standby letters of Credit or any other Drafts or Instruments before they are issued by the Bank or their amendments, modifications issued from time to time and revert to the Bank immediately for any corrections that are required to be done in respect of the same. In the event, by the time Client revert is received, the Bank issues Letters of Credit, Bank guarantees, Standby Letters of Credit or any other Drafts or Instruments then subject to the counter parties or beneficiaries' agreeing/consenting to such corrections, the Bank may carry out the corrections as intimated by the Client.

vi. The Client specifically understands that the Bank has to rely on the service providers, who are appointed by the Bank, to work as agents of the Client, for providing services to the Client in relation to the Trade Transactions including but not limited to sending the documents by courier, post or mail or through Electronic Communication or through any of the platforms. In relation thereto, the Client waives all its claims against the Bank for any loss, damage, delay, mutilation or other errors occurred or payment, demand, claim, expense or cost incurred or suffered by the Client. Notwithstanding anything contrary, the Client or its affiliates shall not have any claim of any nature whatsoever against the Bank in relation to the loss of business, profits or data whether the same is direct or indirect or consequential or special loss or damage notwithstanding whether or not the Bank has advised about the possible or potential loss or damage.

vii. Subject to the provisions above, the liability of the Bank, its officers, directors, advisors and service providers shall not exceed the annual fee / commissions paid by the Client in that Calendar Year.

## 18. INCREASED COSTS

The Client shall, within 3 (three) Business Days of a demand by the Bank, pay the amount of any increased costs incurred by the Bank as a result of: i. the introduction of or any change in (or in the interpretation, administration or application of) any Law/s or Regulation; ii. compliance with any Law/s or Regulation made before or after the date of these Terms (including any Law or Regulation concerning capital adequacy, prudential norms, liquidity, reserve assets or tax); iii. in the event the Bank is called upon to pay any additional amount by foreign Bank / lending agency/ foreign institution; or iv. on account of factors beyond the reasonable control of the Bank. The rights and powers conferred by these Terms are in addition and without prejudice to any other securities which the Bank may now or hereafter hold for the account of Client and these Terms shall continue in force and be applicable to all transactions notwithstanding any change in the status or constitution or present organisation of the Client or otherwise. These Terms shall be subject to such further or other terms and conditions that may be agreed upon in respect of any Trade Transaction that the Bank may at any time process at the Client's request.

## 19. EVIDENCE OF DEBT

19.1 In any legal action or proceedings arising out of or in connection with the Trade Transaction/s, the entries made in the books of accounts maintained by the Bank shall be conclusive evidence of the existence and the amount of obligations of the Client as therein recorded save for manifest error.

19.2 Any certification or determination by the Bank of a rate or amount under the Trade Transaction/s is conclusive evidence of the matters to which it relates.

## 20. RIGHT OF SET-OFF

20.1 The Bank shall have the paramount right of set-off and lien, irrespective of any other lien or charge, present as well as future on the deposits of any kind and nature (including fixed deposits) held/ balances lying in any account maintained with the Bank, whether in single name or joint name(s) and on any monies, securities, bonds and all other Assets, documents and properties held by/ under the control of the Bank (whether by way of Security or otherwise pursuant to any contract entered/ to be entered into by the Client in any capacity) to the extent of all outstanding dues, whatsoever, arising as a result of any of the obligations arising out of Trade Transactions. The Bank shall be entitled without any notice to the Client to settle any Client's Dues whatsoever owed by the Client to the Bank, (whether primary or collateral, or whether joint and/ or several) hereunder or under any other document/ these Terms, by adjusting, setting-off any deposit(s) and/ or transferring monies lying to the balance of any Account(s) notwithstanding that the deposit(s)/ balances lying in such Account(s) may not be expressed in the same currency as such Client's Dues. The Bank's rights hereunder shall not be affected by the Client's bankruptcy or winding-up. It shall be the Client's sole responsibility and liability to settle all disputes/ objections with any such joint

account holders.

20.2 In addition to the above mentioned right or any other right which the Bank may at any time be entitled whether by operation of Law/s, contract or otherwise, the Client authorizes the Bank to combine or consolidate at any time all or any of the bank accounts and liabilities of the Client maintained to or with or to any branch of the Bank.

## 21. Notices

21.1 All notices and other communications provided for hereunder or thereunder shall be (i) in writing; and (ii) sent by a person, overnight courier (if for inland delivery) or international courier (if for overseas delivery) to a Party hereto at its last known address and contact number specified to the Bank, or at such other address and contact number as is designated by such party in a written notice to the other parties hereto.

21.2 All such notices and communications with respect to an Event of Default, consequences of an Event of Default and enforcement of Security under the Trade Transactions shall be effective (i) if sent by telex, when sent (with the correct answerback); (ii) if sent by fax, when sent (on receipt of a confirmation to the correct fax number); (iii) if sent by email, when sent (on non-receipt of a delivery failure notification); (iv) if sent by person, when delivered; (v) if sent by courier, (a) one (1) Business Day after deposit with an overnight courier if for inland delivery and (b) 5 (five) Business Days after deposit with an international courier if for overseas delivery and (vi) if sent by registered letter when the registered letter would, in the ordinary course of post, be delivered whether actually delivered or not.

21.3 An original of each notice and communication sent by email or fax shall be dispatched by person, overnight courier (if for inland delivery) or international courier (if for overseas delivery) and, if such person or courier service is not available, by registered airmail (or, if for inland delivery, registered post) with postage prepaid, provided that the effective date of any such notice shall be determined in accordance with this Clause 21.2 without regard to the dispatch of such original.

## 22. AMENDMENTS AND WAIVERS

Save as where otherwise expressly provided in any Trade Transactions, these Terms (including the schedules and annexures hereto) may be amended, supplemented or modified by the Bank from time to time which shall be applicable to the Client 15 days from the date of uploading the modifications in the Bank's website.

## 23. NO WAIVER; REMEDIES CUMULATIVE

No failure or delay on the part of the Bank in exercising any right, power or privilege hereunder or under any other Trade Transaction/s and no course of dealing between the Client on the one hand and the Bank on the other hand, shall impair any such right, power or privilege or operate as a waiver

thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any one or more Trade Transaction/s preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Trade Transaction/s or expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Bank would otherwise have. No notice to or demand on the Client in any case shall entitle the Client to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Bank to any other or further action in any circumstances without notice or demand.

## 24. DATA PRIVACY / DISCLOSURE / CONFIDENTIALITY

24.1 Client agrees that Bank may use Customer Information for the purpose of statistical analysis and for creation of data ("**Statistical Information**"). In addition to the information that the Bank elicits from the Client, the Client is free to volunteer any other information that the Client feels that the Bank needs to know, but the security and confidentiality as per the Policy of the Bank published on its website [www.kotak.com/en/privacy-policy.html](http://www.kotak.com/en/privacy-policy.html) and the Privacy Notice published on its website [www.kotak.com/en/privacy-policy/privacy-notice.html](http://www.kotak.com/en/privacy-policy/privacy-notice.html) as amended and modified from time to time, is guaranteed only to the information that the Bank directly asks from the Client and the said Privacy Policy and Privacy Notice of the Bank holds true for a person other than the Client who has provided information to the Bank, by any means, with the intentions of establishing a relationship, of whatsoever nature, with the Bank. By divulging any information to the Bank, the Client agrees to the terms and conditions of this Privacy Policy and Privacy Notice of the Bank.

24.2 The Client hereby agrees that the Bank may disclose any information in respect of:

- i. any Client and if more than one person constitute the Client then all such persons severally;
  - a. any of the Trade Transaction/s;
  - b. the Trade Service or any other banking transactions including the credit Facilities availed/ to be availed by the Client from the Bank;
  - c. obligations assumed/ to be assumed by the Client in relation to the Trade Service; and
  - d. default, if any, committed by the Client in discharge of the aforesaid obligations;

to any other Bank or any of its Affiliates, agents and representatives or to any person with whom it intends to enter, or has entered into any kind of transfer, participation or other agreement or transactions in relation to these Terms, the Trade Transactions undertaken by the Client or otherwise.

24.3 Except as provided in this Clause 24, the Bank agrees to keep all information ("**Information**") (including these Terms, Trade Transactions, transaction Documents underlying the Trade Transaction and/or details etc) made available (whether before or after the date of these Terms) by the Client, or on its behalf, to the Bank concerning the Client or the Trade Transactions, Documents underlying the Trade Transaction etc. confidential and not to communicate any Information, or allow any Information to be communicated to any third party unless:

- i. in connection with any proceedings arising out of or in connection with these Terms to the extent that the Bank may consider it necessary to protect its interest or the interests of the Bank; or
- ii. required to do so by an order of a court of competent jurisdiction whether or not in pursuance of any procedure for discovering documents; or
- iii. pursuant to any process of Law/s / Statutory Authorities, courts and/or tribunals in accordance with which such person is required to act; or
- iv. to its auditors to complete an audit of the Bank or to its legal advisers when seeking legal advice in connection with the Trade Transactions; or
- v. to any adviser appointed by the Bank to the extent necessary to enable such consultant or adviser to give the advice required by the Bank; or
- vi. in circumstances where the relevant Information has been published or announced by the Client in conditions free from confidentiality or has otherwise entered the public domain without default on the part of the relevant party; or
- vii. the Information was obtained by the Bank from an independent or third party source.

24.4 Notwithstanding the foregoing provisions of this Clause 24, the Client and if more than one person constitutes the Client then all such persons severally agree that the Bank shall as it may deem appropriate and necessary, be entitled to disclose all or any such:

- a. Information and data relating to anyone acting on the Client's behalf including correspondents, nominees, agents, delegates, service providers, Platform providers, associates and affiliates of the Bank and any one acting on Clients behalf including Correspondent, Negotiating Banks or any other bank or financial institution for payments, receipts who are in any way connected to perform or discharge any duty in relation to the Trade Service or in relating to any Trade Transaction;
- b. default, if any, committed by any Obligor in discharge of the aforesaid obligations,

- a. to CIBIL, any other agency authorized in this behalf by applicable Law/s or the RBI or any other creditor of each Obligor;
- b. CIBIL and any other agency so authorised may use or process the aforesaid information and data disclosed by the Bank in the manner as deemed fit by them; and
- c. CIBIL and any other agency so authorised may furnish for consideration, the processed information and data or products thereof prepared by them, to banks/ financial institutions and other credit grantors or registered users, as may be specified by the RBI in this behalf.

24.5 The Client hereby agrees that in case the Client commits a default in payment any amount due and payable under these Terms, the Bank and/ or the RBI / CIBIL shall have an unqualified right to disclose or publish the details of the default and the name of the Client and its directors/partners as defaulters in such manner and through such medium as the Bank or RBI in their absolute discretion may think fit.

24.6 The Client hereby gives specific consent to the Bank for disclosing and submitting the 'financial information' as defined under the Insolvency and Bankruptcy Code with respect of the various credit Facilities (including the Trade Service) availed from the Bank, from time to time, to any 'Information Utility' as defined under the Insolvency and Bankruptcy Code (or Regulations thereunder) and directions issued by RBI to the banks from time to time and hereby specifically agrees to promptly authenticate the 'financial information' submitted by the Bank, as and when requested by the concerned 'Information Utility'.

**25. ASSIGNMENT OF TRADE TRANSACTIONS**

25.1 The Client may not assign or transfer any of its rights or obligations under these Terms or a Trade Transactions except with the written consent of the Bank.

25.2 The Bank may, in its absolute discretion, assign, transfer or create security over any of its rights under or in respect of these Terms or a Trade Service to any third party, in any manner whatsoever including rated securitization without restriction or notice. The Bank may get such credit ratings done from any rating agency, at the Bank's cost and the Client unconditionally confirms that it shall during the tenor of the Facility provide such information as may be required by the rating agency. The rating agency would have the right to publish such rating. Also, the rating agency would have the right to publish any revision / reaffirmation of the rating based on periodic surveillance over the life of the rated instrument. The Client irrevocably and unconditionally confirms that it shall continue to be bound by the terms hereof notwithstanding such transfer or assignment by the Bank and that the transferee shall acquire an interest in the Facility / Trade Transactions upon the transfer taking effect. The Client agrees and confirms that on assignment of the Facility by the Bank, all the rights, interests, claims of the Bank shall be transferred in favour of the assignee(s) from time to time. Further, the Client undertakes to fulfil and

continue to fulfil all of its obligations hereunder in favour of such assignee(s).

**26. JOINT AND SEVERAL LIABILITY**

The obligations and liabilities of the Client (if more than one person constitutes the Client then all such persons severally) herein contained or implied shall be joint and several. Each Client agrees to be bound by these Terms notwithstanding that any other Client who has intended to sign or to be bound may not do so or be effectually bound and notwithstanding that these Terms may be determined or become invalid or unenforceable against any one or more of such Client whether or not the deficiency is known to the Bank. The Bank may release any one or more of the Client from these Terms and compound with or otherwise vary or agree to vary the liability of or grant time or indulgence to or make other arrangements with any one or more of the Client or any other person, without prejudicing or affecting the Bank's rights and remedies against the other Client. The obligations of each of the Client hereunder are joint and several inter se and independent of the obligations of the other, and a separate action may be brought and prosecuted against any Client alone or jointly.

**27. MORE FAVOURABLE TERMS**

The Client hereby agrees and confirms that in case any other person providing any financial assistance to the Client imposes any conditions not included herein, or in case any of the terms offered by the Client to such person are more favorable to such person than the terms stipulated by, or offered to, the Bank, the Client shall promptly inform the Bank of such terms or conditions and such of those terms and conditions as may be considered necessary by the Bank, in its discretion, shall apply to the Trade Service as if the Client had specifically agreed to such terms and conditions, which terms and conditions shall be deemed to have been expressly incorporated herein.

**28. LIABILITY NOT AFFECTED**

The Client's liability to the Bank shall not be discharged until and unless the Client has paid or discharged the obligations under the Trade Transactions and other transactions undertaken by it, and no change whatsoever in the constitution of the Client regardless of whether the same is with or without the consent of the Bank shall impair or discharge the liability of the Bank to the Client hereunder. Further, obligations of the Client under these Terms will also not be affected by: a) any unenforceability, illegality or invalidity of any obligation of any person under a Trade Transactions undertaken; or b) the breach, frustration or non-fulfilment of any provisions of, or claim arising out of or in connection with Trade Transactions or transactions undertaken.

**29. FORCE MAJEURE**

Force Majeure means and includes any act of god, action of any government or governmental agency, natural occurrences / calamities, Law/s or Regulation (or any change in the interpretation thereof), injunction, currency restriction, sanction, exchange control, industrial action / strike (whether involving the Bank's staff or not), civil unrest, riots, fire , explosion, earthquake, act of any god, war, terrorist action, equipment failure, interruption to power supplies, accident, failure governmental actions/ restrictions such as lockdown etc. to protect the health and safety of the people, system failure or malfunction of any telecommunication and information technology systems employed at any location either by the Client or the Bank or any other person or entity under the payment systems or anything else unavoidable or beyond the control of the Bank; the Bank shall not be liable for any losses nor inability to provide any Facility or handle the documents on collection, caused by or in connection with force majeure. Further, the Bank shall not be obligated to provide any service during the period while Bank's performance is affected by such force majeure condition.

### 30. TERMINATION

- 30.1 Notwithstanding anything contained herein, the Bank may at any time, at its sole discretion, by providing a written notice of not less than 7 (seven) Business Days to the Client specify the termination date of the Trade Service (the "**Trade Service Termination Date**"), and on such date, the Client shall be liable to repay/pay to the Bank the Client's dues in full.
- 30.2 Termination shall not affect any rights or obligations which have accrued or arisen prior to the termination and shall not affect the applicability of the provisions of these Terms to transactions which have taken place prior to the termination.

### 31. THIRD PARTY RIGHTS

No third party shall claim any privity to the Trade Services provided by the Bank under these Terms to Clients and these terms are for the benefit of both the parties only. As such no third party shall claim any intended benefit or any enforceable right as against the Bank or the Client under the Trade Services provided to the Client under these Terms. Similarly, the Bank shall not be obligated to taken any consent from a third party for termination of Services to the Client or for change of these Terms and / or contract.

### 32. GOVERNING LAWS AND JURISDICTION

- 32.1 For any disputes that may arise out of, or in connection with, the Trade Services and these Terms, their interpretation or any non-contractual obligations arising from or connected with them, the rights and obligations of the Client, properties of the Client and the transactions done or contemplated by the Client with the Bank shall ( notwithstanding the jurisdiction, if any agreed by the Bank with the overseas Banks or the jurisdiction that may become applicable either directly / indirectly/ impliedly in respect of any transaction/s or under any ICC Rules), always be subject to the Law/s of India and the jurisdiction of the courts in India. The Client

irrevocably agrees not to bring any action or file any suit or proceeding against the Bank in any other jurisdiction and the Client waives an objection to inconvenience about any forum or venue.

- 32.2 The ICC Rules, as applicable, shall serve, in the absence of proof to the contrary, as evidence of general banking usage with respect to the subject matter thereof. The Client agrees that for matters not addressed by the ICC Rules, each Trade Services shall be subject to and governed by the Law/s of India. If, at Client's request, a particular Trade Transaction is expressly governed by Law/s other than Indian Law/s, or is silent with respect to ICC Rules or governing Law/s, the Bank shall not be liable for any payment, cost, expense or loss resulting from any action or inaction taken by the Bank if such action or inaction is justified under ICC Rules, Indian Law/s or the Law/s governing the Trade Services.
- 32.3 Nothing contained in this Clause 32 shall limit any right of the Bank to take proceedings in any other court or tribunal of competent jurisdiction, nor shall the taking of proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not and the Client irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of such court or tribunal, and the Client irrevocably waives any objection it may have now or in the future to the laying of the venue of any proceedings and any claim that any such proceedings have been brought in an inconvenient forum.
- 32.4 The Client hereby consents generally in respect of any proceedings arising out of or in connection with any Trade Transactions to the giving of any relief or the issue of any process in connection with such proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings.
- 32.5 To the extent that the Client may in any jurisdiction claim for itself or its Assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its Assets such immunity (whether or not claimed), the Client irrevocably waives any right of sovereign immunity from suit, jurisdiction or adjudication (including in respect of pre-judgement interim relief and execution of any judgement) that it may have in such jurisdiction or otherwise, whether that immunity relates to itself or to any commercial or non-commercial Assets (including land, bank accounts or other Assets held in the name of a diplomatic mission or otherwise or belonging to the Client's central bank or other monetary authority).
- 32.6 If the Client specifies a process agent either in the Application or in any Trade Transaction then any service to such process agent shall constitute a service to the Client. In case no process agent appointed or upon request by the Bank the Client does not appoint a process agent in 5 days then Client agrees that process shall be deemed served if sent to its address given for notices under these Terms,

application or Trade Transactions. The Client agrees that nothing in these Terms shall affect Bank's right to serve process/ summons in any other manner permitted by Law/s or to commence legal proceedings or otherwise proceed against the Client in any other jurisdiction. The Client agrees that final judgment against it in any action or proceeding shall be enforceable in any other jurisdiction within or outside the location of the branch of the Bank that has provided the Trade Services and a certified copy of any order or judgement of a court / tribunal shall be conclusive evidence of such order or judgment.

### **33. SANCTION LETTER TERMS INCORPORATED BY REFERENCE**

33.1 The Parties hereby agree that these Terms are in addition to and not in derogation of the terms stipulated by the Bank in the Sanction Letter and all the terms and conditions of the Sanction Letter shall be deemed to be incorporated herein by reference.

33.2 All rights and obligations of the Bank and the Client respectively hereunder and under any Sanction Letter or other documents shall extend to the amounts outstanding under any Trade Transaction notwithstanding the specific limit stipulated. All the rights and securities created hereunder in favour of the Bank and the obligations of the Client there under will extend to cover the Client's Dues under any account whatsoever of the Client with the Bank, notwithstanding that such account may not relate to any particular Facility agreed to be granted by the Bank to the Client.

33.3 The Bank reserves the right at any point of time, to revoke or cancel the Facilities sanctioned and/or vary, alter, modify or rescind, amend or change any one or more of the terms & conditions of the Facilities, at the Bank's discretion, with such notice as the Bank may deem reasonable and without assigning any reasons. As regards the unutilised limits if any under the Facilities, the Bank, reserves the right at any point of time, to revoke or cancel and/or vary, alter or modify the said unutilised limits, at the Bank's discretion without prior notice & without assigning any reasons therefore. The Client agrees and confirms that the provision of this Facility is at the total discretion of the Bank and any request for extension/ enhancement / renewal of this Facility / limit is at the discretion of the Bank and on fulfilment of terms and conditions as prescribed by the Bank.

33.4 The Client agrees, declares and confirms that the Facilities so extended to the Client shall be utilized solely for the purpose so mentioned herein and shall not be deployed either directly or indirectly by the Client for any investment in any speculative, real estate or capital market activities.

### **34. DOCUMENTS**

All documents to be furnished or communications to be given or made under these Terms shall be in English or if any other language, shall be accompanied by a translation into English, certified by the Bank, at the expense of the Client, which translation shall be the governing version among the

Client and the Bank. The Bank has a right, not an obligation, to ignore the contents of the documents which are not in English or refrain from acting on basis of those documents which are not in English.

**35. NO PUBLICITY** The Client, unless required to do so under any Law/s, shall not issue any information, document or article for publication in any news or communications media or make any public statement in relation to Trade Services availed from the Bank without the prior written consent of the Bank.

### **36. SEVERABILITY**

Any provision of these Terms, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of prohibition or unenforceability but shall not invalidate the remaining provisions of such Trade Transactions or affect such provision in any other jurisdiction.

### **37. MULTIPLE ROLE DISCLOSURE**

The Client understands accepts that the Bank is a financial conglomerate and offers wide range of financial services, through its various branches including those overseas and through its correspondent Banks across the globe. In relation thereto, the Bank may assume multiple roles and provide various services and facilities to the customers of the Bank some of whom may be the counter parties or competitors of the Client. Further, the Client acknowledges that the Bank is entitled to nominate any of its branches or its correspondent banks as an or additional advising or negotiating bank in relation to any Trade Transaction.

### **38. ENTIRE AGREEMENT**

These Terms shall supersede all prior discussions and representations between the Parties, save with respect to any terms and conditions contained in the Sanction Letter, which: (a) are not expressly included in these Terms; and/or (b) are more stringent in comparison to the condition(s) contained in these Terms, in which case such condition(s) in the Sanction Letter shall be binding on the Parties and be deemed to be included in these Terms by reference.

### **39. BENEFIT OF THESE TERMS**

These Terms shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto and shall inure to the benefit of the Client and the Bank.

### **40. ACCEPTANCE**

The Client admits, states, confirms and affirms that the Client has read and understood the contents of each and every page of these Terms, including the Schedules. The Client agrees to abide by all the Terms and Conditions. By clicking the dialog box "I Agree", the Client will be deemed to have assented and agreed to these Terms and the Client shall not at anytime in future claim ignorance or call in



question the contents of these Terms or the acceptance of these Terms by them.

## ANNEXURE A

### DEFINITIONS

**Advising Bank:** means the bank that advises the credit at the request of the Issuing Bank.

**Application Form:** means an application made by the Client under these Terms in the format as may be prescribed by the Bank for availing the Trade Services which includes any Instruction given by the Client from time to time in relation to any Trade Transaction.

**Assets:** mean all the movable/immovable assets/properties including but not restricted to shares/ stock / bonds of the Client or Drafts and include the Client's entire raw materials, finished and semi-finished goods, stocks in process, consumable stores, book debts, intellectual property rights, investments, cash flows, revenues and receivables.

**Authorised Officer:** in relation to the Client means any person or entity nominated by the Client, who is duly empowered to bind the Client and whose authority is evidenced by a consent, resolution or any other appropriate means of authorization (acceptable to the Bank) in favour of such person or entity to give Instructions and to do all things for availing Trade Services from the Bank.

**Bill of Lading:** means a legal document issued by a carrier to a shipper that details the type, quantity, and destination of the Goods being carried.

**Beneficiary:** means a person or entity named in the Documentary Credit or Drafts as a person or entity entitled to receive payment under such Documentary Credit or Drafts.

**Claim / Demand:** means a formal demand for payment

**Client's Dues:** shall refer to the indebtedness of the Client as set out in Clause 5.1 hereto.

**Collecting Bank:** means any bank, other than the remitting bank, involved in processing the collection.

**Compliance Action:** shall refer to the actions mentioned in Clause 2.2(l)(iv).

**Confirming Bank:** means the bank that adds its confirmation to honour or negotiate a complying presentation to a credit upon the Issuing Bank's authorization or request. For the purpose of this definition the term "Confirmation" means a definite undertaking of the Confirming Bank, in addition to that of the Issuing Bank, to honour or negotiate a complying presentation.

**Cross Default:** shall refer to the occurrence of any one or more of the events of default set out in Clause 5 hereto.

**Documentary Collection :** means collection activity undertaken by the Bank as a Collecting Bank or Remitting Bank under ICC publication for Uniform Rules for Collection 522.

**Documentary Credit:** means a written undertaking given by a bank (Issuing Bank) to the seller (beneficiary) on the instruction of the buyer (applicant) to pay at sight or at a determinable future date up to a stated amount of money and includes any LC, SBLC, Indemnity, Guarantee or any other written obligation assumed therein whether issued by the Bank or any other bank together with its supplements, modifications and amendments.

**Documents underlying the Trade Transaction** means any and all documents, relating to a Trade Transaction whether or not they directly relate to the Trade Transaction and/or in the custody of the Client and include, all documents of title, certificates, invoices, statements, insurance policies, warehouse warrants, warehouse receipts, documentary credits, guarantees, confirmations, permissions, certificates issued by surveyors, certificate of origin, bills of lading, airway bills, lorry receipts and other transport documents, Drafts including the documents relating to the transactions of purchase, services availed from various agencies, transport of the raw material for manufacturing goods or for providing any services or any other similar instruments relating to a Trade Transaction and includes a Documentary Credit

**Drafts:** means any negotiable document through which a person both domestic or foreign including the Banks and other intermediaries involved in the Trade Transaction undertake to pay the amounts mentioned therein on the time and terms indicated on such documents which includes drafts, bills of exchange, promissory notes, cheques, negotiable document of title to goods, warehouse receipt / warrant issued by any of the parties involved in or processing of the Trade Transaction.

**Electronic Communication:** includes any communication sent by the Client, containing messages, mandates, directions, documents / paper, faxed or scanned documents relating to through facsimile (fax), email, or by any other electronic mode of transmission, to the Bank or to be made between the Bank and the Client under or in connection with any Trade Transactions.

**Event of Default:** shall refer to the occurrence of any one or more of the events of default set out in Clause 4.2 hereto.

**Exchange Control Laws:** means any Law/s imposing any restrictions on the free convertibility and /or dealings in currencies prevailing in the jurisdictions or territories, in which any action whether part or full happened, in addition to and including but not limited to in case of Indian scenario FEMA (Foreign Exchange Management Act, 1999) together with any statutory modifications or re-enactments thereof from time to time, rules, Regulations, notifications, directions, circulars or orders issued/made by Reserve Bank of India, Directorate of Import and Export, laws relating to Prevention of Money Laundering Act, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, Foreign Contribution and Regulation Act, Direct and Indirect Tax laws both state and central; any rulings, laws, rules, policies, press notes, guidelines, directives, circulars issued by the Government of India or under Foreign Direct Investment and Foreign Trade Policy or under any other law; orders, directions, restrictions issued by Statutory Authorities and Governmental agencies and/or courts and/or tribunals and/or Indian Banks

Association, Foreign Exchange Dealers Association of India, Stamp Laws and other legislations by various State / Central / Municipal governments, and any Sanctions laws as mentioned in the para 2.2.(II) (i) of these Terms

a) In addition to the above, in respect of the transactions emanated or passed through or concluded in foreign countries, the exchange control laws similar to what is stated above of that country.

**Facility/Facilities:** means the working capital facilities so sanctioned / agreed to be sanctioned either Fund Based and/or Non Fund Based (including for provisioning any Trade Services) in nature granted/agreed to be granted by the Bank to the Client as specified in the respective Sanction letter/s and on the terms and conditions set out therein.

**Goods:** means the goods or products or services which are the subject of a Trade Transaction, which are permitted for exports / imports under the prevailing Foreign Trade Policy (FTP) of India, as on the date of shipment and complies with all the rules, regulations and directions applicable to exports and imports.

**ICC Rules:** Unless the Bank agrees on the request of the Client, below mentioned transactions will be undertaken on the basis of each publication set out below and rules issued by the International Chamber of Commerce (ICC Rules) and as may be revised from time to time:

i. all Documentary Credits will be issued subject to the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600 (UCP600) and, if required by the Bank, the Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (eUCP);

ii. all SBLCs will be issued subject to the International Standby Practices 1998, ICC Publication No. 590 (ISP98);

iii. all Bonds and Guarantees will be issued subject to the Uniform Rules for Demand Guarantees, ICC Publication No.758 (URDG 758) if specifically provided in the Trade Transaction that the same is subject to URDG 758; and

iv. all Collections will be undertaken subject to the Uniform Rules for Collection 1995, ICC Publication No. 522 (URC 522).

If there is any conflict between any ICC Rules and these Terms, these Terms shall prevail.

**Instruction / Instructions:** includes, any communication sent by the Client containing messages, mandates, directions, documents/paper, whether in physical form or through Electronic Communication requesting the Bank to do an act or omission in relation to the Trade Services.

**Issuing Bank:** means the bank that issues a credit at the request of a party in whose behalf a credit is issued or on its own behalf.

**Law/s:** means, with respect to any person, any transnational, domestic or foreign federal, state or local laws (statutory, common or otherwise), constitution, acts of legislature, Exchange Control Laws, treaty, convention, ordinance, code, rule, Regulation, order, bye- laws, notifications, guidelines, policies, directions, directives or other similar requirement enacted,

adopted, promulgated or applied by a governmental authority and includes injunction, judgment, decree, ruling directives, or judicial or quasi judicial or administrative orders, permits and other duly authorized actions of any governmental authority that is binding upon or applicable to each party, as amended, unless expressly specified otherwise.

**Material Adverse Effect:** for the purposes hereof shall mean a material adverse effect (i) on the Assets, business, properties, liabilities, financial condition, results, operations or prospects of the Client; or (ii) on the ability of the Client to perform its obligations in terms hereof; or (iii) which materially impairs/diminishes the value of the assets of the Client.

**Nominated Bank:** means the bank with which the credit is available or any bank in the case of a credit available with any bank.

**Online Trade Facility:** means a service extended by the Bank either through its website, net banking or through any other Platform provided by TSPs to enable the Client to directly and independently input the data and /to handle the Trade Transactions with or without interference of the Bank's officials.

**Platforms:** shall mean the computing or digital environment in which a piece of software is executed and includes hardware or the operating system (OS), even a web browser and associated application programming interfaces, or other underlying software, as long as the program code is executed with it.

**Remitting Bank:** which is the bank to which a party has entrusted the handling of a collection.

**Regulation:** include any rule, official circular or directive guidance including informal guidance whether or not having the force of law of any statutory, governmental, regulatory, self-regulatory, intergovernmental or supranational agency or body or department of any of the above or other authority or organization.

**Sanctions:** shall refer to contents specified in clause 2.2(II)(i).

**Security:** means and includes any right, title or interest or a claim to any Asset, created in favour of, or provided to the Bank by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation by the Client or security provider.

**Suppliers:** means a person who sells or agrees to sell and/or Goods or Services.

**Statutory Authority/ Statutory Authorities:** includes any authority or agency carrying out any one or more statutory functions / sovereign functions and including but not limited to the regulators, regulatory authorities, police, investigation authorities, enforcement officers/authorities, discharging their duties under Law/s.

**System:** shall include the Platform, physical equipments, software and other related services provided by the Bank to the Client to avail Online Trade Facility.

**Third Party Software Providers (TSP):** in relation to the Platform means any person or entity other than the licensee who provides Software as a service or Infrastructure as a Service as the case may be to the Bank which are not exclusively operated or controlled by a Bank and may include applications embedded Bank's computer systems or having interface with the Bank's website.

**Trade Services:** includes providing services at the request of the Client in granting of fund based and non-fund based credit facilities and processing any Trade Transaction at the request of the Client for (i) issuance of documentary credits, (ii) instructing or acting as an Advising Bank, Confirming Bank or Nominated Bank whether on disclosed or undisclosed basis, (iii) issuance of Standby Letters Of Credit "SBLC or Bank Guarantees "BG" (iv) issuing counter guarantee by way of BG or SBLC to the guarantee, SBLC / BG Issuing Bank ("CG") or (v) issuing Drafts (vi) co-accepting the obligations under any Draft, (vii) handling of Collections and Remittances, (viii) provisions of finance relating to the import and export like packing credit and suppliers credit, (ix) handling of documentary credit, instrument or document, (x) releasing the transport documents (xi) issuance of Indemnities and shipping guarantees, (xii) signing, endorsing, release of documents or (xiii) providing any other service or product.

**Trade Transaction:** means any activity or transactions including multiples of any such activity or transactions in bulk undertaken by the Client while availing the Trade Services from the Bank.

## **SCHEDULES**

At the request of the Client and subject to these Terms, together with the Application Form and Documents underlying the Trade Transactions and their annexures, the Bank has offered the Trade Services to the Client without having any obligation to assume any funded credit exposure on the Client.

Bank and the Client agree, that the Client may elect to avail of the Trade Services either in a single transaction or in multiple transactions as mutually decided between the Bank and the Client from time to time. In this connection and under these circumstances if the Client agrees to avail of the Trade Services in multiple tranches then the Bank and the Client shall enter into such documents, deeds and instruments from time to time, if so required. However, all such annexure(s)/ supplemental documents, deeds and instruments so executed between the Client and the Bank shall be read in connection and conjunction with these Terms and this Schedule as if the same form an integral part hereof.

### **SCHEDULE 1**

#### **LETTER OF CREDIT**

#### **THE PARTIES AGREE AS UNDER:**

##### **1. IMPORTS**

1.1 The Application Form submitted by the Client shall be deemed to have been accepted and the Documentary Credit

deemed to have been issued when an advice thereof has been sent to the Beneficiary through Society for World Wide International Financial Telecommunications ("SWIFT") / Structured Financial Messaging System ("SFMS") / any other electronic platform or mode of communication adopted for such purposes. Where charges are for the account of the Beneficiary and are unpaid for any reason, the Client undertakes to reimburse the Bank in full.

1.2 Client shall be deemed to have verified the draft text / copy of each message to be transmitted for each Documentary Credit or other communication in order to check its correctness and consistency with the relevant Application Form or in other letters or documents or other Instructions sent by the Client requesting the Bank for issuing a Documentary Credit and agrees to immediately notify the same to the Bank before it is sent to the Beneficiary. In the event the Bank transmits the message on Instructions of the Client and the Client thereafter points out any inconsistency in the Documentary Credit within 24 Hrs of such transmission then the Bank shall make all reasonable efforts to rectify the same provided the Beneficiary and / or Beneficiary Bank consents to the same. Bank shall not have any obligation or responsibility to correct any inconsistencies pointed out by the Client after 24 Hrs and the loss if any caused / obligations if any required to be incurred by the Client in that regard shall be to the account of the Client.

1.3 Client acknowledges that the Documentary Credits issued are irrevocable (except to the extent permitted under the Documentary Credit or ICC Rules or International Standby Practices (ISP)) and the same can't be cancelled or modified except with the consent of all parties. A Documentary Credit is by nature a separate transaction from the underlying Trade Transaction, executed by the Client with other parties, against which the Documentary Credit was executed. As such the Client acknowledges that Bank can independently determine the complying presentation of the Documentary Credit submitted to it, for making any payment or accepting or negotiating drafts or drawings or claim, notwithstanding any notice, defence or claim of the Client against the Beneficiary.

1.4 All Documentary Credits shall be issued entirely at Client's risk and the Client shall honour all Drafts presented thereunder even should the Goods not arrive or be refused for landing, whether through any quarantine, act of war or prohibition or restriction imposed by regulations, byelaws, ordinances, statutes or executive decision whether of the central or state or local government or body or authority or for any other reason whatsoever. On no account shall any claim be made against the Bank on any ground whatsoever except in case of gross negligence, wilful default or fraud on the part of the Bank, in which event, the claim, if any so made shall not exceed the fees paid by the Client to the Bank in the said Trade Transaction in the preceding financial year or Rs.20,000/- whichever is less.

1.5 Documentary Credits may be amended and / or modified by the Bank in its absolute discretion, including for an increased limit on the Client, upon Bank receiving written instructions for the same. In such an event, such amendment/ modification will be deemed to form part of the original Instructions and the principal Documentary Credit to which such amendment and / or modification was issued and the same will be governed by these Terms. The Client agrees, covenants, records and confirms that it shall be bound by any amendment/ modification, as if, such amendment / modification including the increased limit has been incorporated in the principal Documentary Credit. The Bank may, subject to the Beneficiary's

consent cancel whole or part of any unused balance of a Documentary Credit;

1.6 Bank may in its discretion, notwithstanding any contrary Instructions, reject any claim, which does not comply with the Documentary Credit or other communication without any intimation to the Client. It is agreed that the Bank is not obliged to intimate or obtain Client's consent or require/ seek waiver (even if it is sought for in one or more transactions, the same does not become obligatory for the future transactions) for any discrepancy before refusal of such claim. In case after notification of any discrepancy, the Client requests the Bank or its correspondent Bank or Bank's agent, to waive such discrepancy and notwithstanding such discrepancy requests, for effecting payment or releasing documents or for assuming obligations like issuing guarantees and indemnities, and based on such request Bank or its correspondent Bank or its agent makes any payment or assumes any obligation or issues instructions for release of documents, in such case the Client irrevocably confirms that it shall make payment / reimbursement and shall honour the payment and indemnity obligations as per Clause 6 of these Terms.

1.7 Client shall pay its liabilities in respect of any Documentary Credit, before seeking release of Documents underlying the Trade Transaction or Goods and shall pay or discharge liabilities in respect of such Documentary Credit. Bank shall not be liable for any loss that may be caused to the Client in that regard.

1.8 Client undertakes to submit to the Bank the exchange control copy of the relative Customs Bills of Entry (if the import/export records are not available in the Import Data Processing and Monitoring System (IDPMS) / Export Data Processing and Monitoring System (EDPMS)) within the time limit stipulated by RBI.

1.9 Date of receipt of Documents underlying the Trade Transaction by the Bank as registered in the records of the Bank shall be conclusive and binding on the Client. For the purposes of any such Documentary Credit, the date of any Bill of Lading shall be deemed to be conclusive proof for the date of shipment and the absence in any Bill of Lading of any positive evidence of transshipment shall, in Bank's favour, be conclusive that transshipment has not taken place.

1.10 Bank's decision that the Documents underlying the Trade Transaction are in conformity with the terms of such Letter of Credit (LC) will be conclusive and binding on the Client in all respects.

1.11 Client hereby irrevocably agrees that the Bank or its officers or agents or correspondent bank or a confirming / reimbursing / nominated/ negotiating bank or any person firm or company who shall make any payment or accept any Drafts in consequence of any such Documentary Credit shall only be bound to examine with reasonable care to ascertain that the Drafts and Documents underlying the Trade Transaction issued under any such Documentary Credit, appear on their face to be in accordance with the terms and conditions of the Documentary Credit and that, in particular, but without in any way limiting the foregoing, neither the Bank nor any such officer, person, firm or company nor a nominated bank shall be responsible for or be required to look into; (a) the correctness of the description, leading marks, quantity, quality or value of the Goods or of the charges as stated in invoices or bills of lading or other Documents underlying the Trade Transaction; or (b) the validity, accuracy, genuineness, terms & conditions or sufficiency of any Documents underlying the Trade Transaction or of any

endorsement thereon tendered; or (c) the terms & conditions or sufficiency or validity or genuineness of any insurance of the Goods; or (d) delays or errors in transmission or non-delivery of post / courier or other mechanically or electronically transmitted messages to or from the confirming / reimbursing / nominated/ negotiating bank or for delays in transmission or loss of Documents underlying the Trade Transaction through the post / courier or for delays loss or damage to Goods; or (e) errors in translation or in interpretation of technical terms or any ambiguity in Client's instructions; or (f) the use which may be made of any Goods imported under such Documentary Credits or for any acts or omissions of the Beneficiary/ies in connection therewith.

1.12 Goods imported under the Documentary Credits shall be deemed to have been pledged in favour of the Bank. Client shall execute Trust Receipt(s) in favour of the Bank and against execution thereof, the Bank shall authorize the Client to take delivery of the Goods and to hold the same as their trustees. If the Bank allows the Client, either expressly or impliedly, to take the delivery of Goods then the Client shall hold such Goods or any process improvements done to such Goods or in case of sale of the goods, hold the sale proceeds thereof in trust for and on behalf of the Bank and shall immediately handover the Goods, process improvements done to such Goods or the sale proceeds thereof to the Bank upon request being made by them in that behalf. The rights and powers conferred by these Terms and Schedule are in addition and without prejudice to any other securities which the Bank may now or hereafter hold for Client's account and these Terms and Schedule shall continue in force and be applicable to all Trade Transactions notwithstanding any change in the status or constitution of Client's present organisation or otherwise.

1.13 On arrival of the Goods, Bank shall be at liberty to have them warehoused in the name of the Bank and insured against comprehensive or specific risks but without there being any obligation on the Bank to so warehouse and insure and the Bank will be in no way responsible for any loss or damage entailed through the Bank's omission to so warehouse and insure the said Goods. Further, the Bank is also authorised to collect the claim amounts from the insurance company or settle / negotiate with the insurance company for any Claims against the Goods covered under the Trade Transaction. Client accepts that any such settlement / negotiation by the Bank shall be binding and conclusive as against the Client.

1.14 No delay on Bank's part in exercising any power of sale or any other rights or options hereunder, and no notice or demand, which may be given to or made upon the Client by the Bank, shall constitute a waiver thereof or limit or impair the right of the Bank to take any action or to exercise any power of sale, or any other rights or options hereunder, without notice or demand, or prejudice the rights of the Bank as against the Client in any respect.

1.15 In case of import collections, the Bank may represent its Correspondent bank or other banks for presenting the documents for collection to the Client either on the basis of such delivery of Documents against acceptance (D/A) or Delivery of Documents for payment (D/P). If the Bank provides any import finance to the Client for meeting the financial obligations under the documents for collection presented either on D/A basis or D/P basis, the Client undertakes to pay the amounts due thereunder on maturity date to the Bank without fail and shall hold the Goods so imported in trust for the benefit of and as a security to the Bank and agrees to deliver

or deposit the Goods as and when required by the Bank as per above clause 1.12 to 1.14.

## 2. EXPORTS

The provisions of these Terms and the Schedule shall apply to this clause, without in any way limiting any other right, power or remedy, under each Documentary Credit paid, accepted, discounted, negotiated, advised or confirmed by the Bank at Client's request.

2.1 The Client will not require any additional finance from the Bank against the Drafts under the Documentary Credits. However if at the request of the Client, Bank agrees to provide financial facility to the Client then also the Bank shall not be obliged to accept bills, and /or discount, negotiate any Drafts or make payment, whether at sight or usance, under a Documentary Credit unless:

a) the Client submits all Documents underlying the Trade Transaction as may be required by the Bank including the Documentary Credit and all its amendments are accepted by the Client and the Bank and /or the Drafts are issued within the time lines prescribed by the Bank.

b) the Bank in its sole discretion determines a complying presentation or on the face of it the Documents underlying the Trade Transaction are regular and comply with the terms of the Documentary Credit and the Client is shown as a beneficiary and such Documentary Credit governed by UCP or any other terms or governing law as may be agreed by the Bank.

c) Client presents a Bill drawn on the Bank for acceptance.

2.2 **Payment:** Amounts payable to the Client upon discounting, negotiating, or accepting Drafts executed pursuant to a Trade Transaction shall always be at the discretion of the Bank depending on the nature of Draft, value of amount, discounting rate and tenor. Payment will be credited to the working capital account of the Client after deducting the charges, disbursements and other expenses as may be incurred by the Bank in connection with such Drafts.

2.3 The Client shall repay the amounts payable on such Drafts on maturity date of the Facility. If the Client fails to pay the amounts due under such Drafts then the Client shall be liable to pay interest accrued on daily basis, along with additional interest / penal interest as the case may be, based on the rates as may be determined by the Bank in this regard in terms of Clause 11 to 15 of these Terms. The Client agrees that the Statement of Account issued by the Bank shall be conclusive and binding on the Client.

2.4 Drafts / confirmations / accepted Bills of Exchange and other documents issued by the Issuing Bank pursuant to the complying presentation are delivered to the Bank for negotiation, are the only documents to be delivered to the Bank for negotiation purpose and the Client confirms that they relate to sale of Goods described in the Documents underlying the Trade Transaction that are shipped to the Buyer.

2.5 The Bank shall have full recourse to the Client for the amounts paid on the basis of such Drafts / confirmations / accepted Bills of Exchange and other documents negotiated,

accepted, discounted by the Bank under the Trade Transaction, notwithstanding any invalidity, insufficiency, defect either under the Drafts/ confirmations / accepted Bills of Exchange and other documents or in the Documents underlying the Trade Transaction.

2.6 Any act or commission or omission of anything done to be done by the Bank in negotiating the Drafts/ confirmations / accepted Bills of Exchange and other documents shall be without prejudice to the rights of the Bank to recover the amounts paid to the Client under such negotiation and shall not in any way affect the liability of the Client to the Bank.

2.7 At the request of the Client , on such terms and conditions as may be acceptable to the Bank, in respect of any and all Documents underlying the Trade Transaction delivered by the Client to the Bank either for collection, security or for any specific purpose, irrespective of whether the Bank has negotiated the documents or not, the Client authorises the Bank 1) to accept payment before maturity from the Buyers/ Drawee or acceptors by giving rebate or discount or 2) to take any conditional acceptance to honour the Bills, for extending the time for payment of Bills under the Documents underlying the Trade Transaction or 3) for accepting part payment for part or proportionate delivery of Goods 4) to accept any request from any Drawee/ Acceptor for delayed presentation of Bills / Drafts for payment or 5) to deduct any amounts payable by the Bank to any person who has supplied any Goods or Services for such export transaction or who is entitled to receive any amount under the underlying Trade Transaction irrespective of whether there is any obligation on the Bank to deduct the said amounts either under any Law or UCP or in a contract. 6) to take steps for recovery or instituting proceedings for recovery or 7) to grant any other indulgence or forbearance to any Drawee / acceptor of Bills / Drafts.

## 3. GENERAL CONDITIONS FOR IMPORTS & EXPORTS.

3.1 Client hereby irrevocably and unconditionally agrees that the Client shall furnish to the Bank at the time of submitting the Application Form along with other documents, not limited to the following duly completed:

- i) Order together with the order confirmation of Supplier or his authorized agent,
- ii) Proforma Invoice of Supplier duly countersigned by the Client;
- iii) exchange control copy of the relative Import licence if the goods are under restricted list;
- iv) Proof of a valid Import Export code number assigned by the Director General of Foreign Trade showing that the Client is authorised to undertake imports of the Goods;
- v) copy of the I E Licence will be provided to the Bank if the goods imported or exported / proposed to be imported or exported are under the restricted list;
- vi) undertaking that the Trade Services shall be used only for the purposes as has been disclosed to the Bank in its request and/or application, unless otherwise previously permitted in writing by the Bank;
- vii) undertaking to maintain such margin (s) in respect of each Documentary Credit as set out therein ("**Margin Money**") and the Client agrees that the Bank shall have the right to appropriate the Margin Money towards the outstanding LCs or any dues regardless of whether or not the Margin Money pertains to a particular Letter of Credit or not.

viii) Undertaking that the transaction covered under the Facility does not involve and is not designed for the purpose of any contravention or evasion of the provisions of the Foreign Exchange Management Act, 1999 or of any rule, regulations, notifications direction or order made thereunder or of the Prevention of Money Laundering Act, 2002 of any other law, rule, regulation or direction; the import of Goods is/are not in contravention of Trade Policy/Exim Policy guidelines prescribed by the Government of India from time to time;

ix) undertaking that it shall comply with any and all exchange or other regulations as are in force and that may come into force from time to time in respect of purchase of foreign exchange in relation to the above Drafts drawn or purported to be so, under the Documentary Credit/s.

3.2 These Terms together with the Schedules shall be subject to such further or other terms and conditions that may be agreed upon in respect of any Documentary Credit prior to establishment of that individual Documentary Credit that the Bank may at any time issue at Client's request.

3.3 In case the Bank issues any Documentary Credit or other communication, mirroring the obligations issued under some other Documentary Credit or other communication (Master Documentary Credit or counter guarantee) through a back to back arrangement, then the Client agrees that liabilities incurred or obligations assumed by the Bank under such Documentary Credit or other communication shall be an independent obligation assumed by the Bank and not be dependent on the basis of back to back arrangement through Master Documentary Credit or Counter Guarantee and the same is not subject to any terms and conditions or performance of any obligation or action under such Master Documentary Credit or Counter Guarantee.

3.4 The Client unconditionally and irrevocably confirms that Bank shall not be obliged to notify the Client of any risks, differences or incompatibilities between the Documentary Credit or other communication issued on the basis of or in relation to the Master Documentary Credit or Counter Guarantee. Further, the Client agrees that it shall not take any steps for any amendment or modification or take any action under the Master Documentary Credit or Counter Guarantee which might affect any rights of the Bank or result in increasing the obligations or liability of the Bank under the Documentary Credit or other communication. Client irrevocably agrees to transfer and assign absolutely to the Bank, all its rights including right to make a Claim irrespective of any discrepancies or irregularities in the Documents underlying the Trade Transactions and the payment rights under the Master Documentary Credit or Counter Guarantee and authorises the Bank to make a Claim under such Master Documentary Credit or Counter Guarantee.

3.5 Client confirms that the negotiations of the Documents underlying the Trade Transactions shall be confined to the Bank; the Bank or a nominated bank shall have absolute discretion as to whether or not to negotiate any such drawings, notwithstanding any such Documentary Credit which the Client may request the Bank to open may provide that the beneficiary will draw an Usance bill/s on the Client. The Client irrevocably authorise the Bank in its absolute discretion, to negotiate the documents sent under the said Documentary Credit and make payment to the Beneficiary of the amount of the bill/s drawn by the Beneficiary upon receipt by the Bank of the said Documents underlying Trade Transaction without reference to the Client or without obtaining Client's acceptance of

such bill(s), provided the Bank consider the same in its reasonable judgement to be in accordance with the terms of the said Documentary Credit/s.

3.6 Irrespective of whether the confirmation given by the Bank to any Documentary Credit or SBLC is on disclosed basis or undisclosed basis and payment in full is not received by the Bank from any Issuing Bank against such Documentary Credit or SBLC, due to any event or agreement or documents which has the effect of retention of / non-payment of amounts payable to the Client either in full or in part, irrespective of whether such Claim made by the Importer or the Issuing Bank or any party to the Drafts has any merit or not (**Recourse Event**), or due to any other event or circumstance which results in non-payment of the amounts either in part or in full due to the Client, against which the Bank has taken the credit exposure or granted facilities, then the Client irrevocably agrees to pay to the Bank such amount as may be required to fully discharge the obligations of the Client to the Bank.

3.7 Bank shall not be obliged to negotiate or discount any Documentary Credit, even if such Documentary Credit or SBLC is confirmed by it whether on disclosed or undisclosed basis, if the same were amended without the consent of the Bank or if the Documents underlying the Trade Transaction does not fully comply with the terms of such Documentary Credit or SBLC or there is any discrepancy from the copy of such Documentary Credit or SBLC with the originals or subject to any Sanctions or any event due to which the Bank cannot Claim any payment under such Documentary Credit or SBLC.

3.8 Client agrees that it will not take any action, which in any way affects the rights of the Bank in recovering the amounts under the Documentary Credits or SBLC. Further, in case the Bank gives confirmation on undisclosed basis it shall make presentation of such Documentary Credit or SBLC only to the Bank and provide the Bank all the Documents underlying the Trade Transactions including the original Documentary Credit or SBLC.

3.9 Transfer of rights under Goods and Documents: All rights of the Client under the Documents underlying the Trade Transactions, Drafts, Goods underlying the Trade Transactions and their sale proceeds and receivables including insurance claims shall pass on to the Bank free of any liens and encumbrances and the Client undertakes to execute and authorise the Bank as its attorney to do all actions and execute all documents as may be necessary to give the required rights to the Bank in this regard.

3.10 If the Client, in relation to any Trade Transaction, does not honour or fails to meet its liability to the Bank arising out of or in connection with such Trade Transactions, the Bank may sell Documents underlying the Trade Transaction or Goods (before or after arrival) covered under such Trade Transaction or debit the Client's account with any shortfall.

3.11 If the Bank holds a guarantee from another party, guaranteeing the due performance of Clients obligations under the Documentary Credit, the Bank shall in the event of non-payment by the Client within a period of seven days from the date of presentation of the Drafts drawn under the Documentary Credit on the Bank, be at liberty, without in anyway affecting its rights against the Client in any manner whatsoever, to present such Drafts under the said Documentary Credit to the guarantor and to accept payment from such guarantor and to handover the discharged Drafts and

Documents underlying the Trade Transaction to such guarantor. However, the Bank's rights and obligations hereunder shall be in addition to and shall not affect or prejudice any other or further security required or obtained by the Bank in relation to any liability with respect to the outstanding Documentary Credit and shall be a continuing indemnity until all obligations covered by the Documentary Credits are fully discharged.

3.12 In the event that the Trade Services are granted by way of SBLC for arranging Buyer's Credit / Supplier's Credit, the Client's liability to pay all the amounts under the Trade Services shall be absolute and unconditional. It will not be open to the Client to refuse to make payment on any ground(s) whatsoever. The Client will pay the Bank not later than the date specified, an amount equal to the amount due and payable to the Bank as stipulated in the duly executed Application / Instruction pursuant to which the Buyer's Credit / Suppliers Credit has been granted to the Client by the Bank. All the terms and conditions in such duly executed application, including but not limited to the principal amount due and the interest thereon and the mode of payment thereof, shall be binding on the Client.

3.13 All transactions under the LCs shall be governed by the provisions of the UCP 600 or any other modifications or amendments thereto for the time being in force, except so far as is expressly stated herein.

3.14 In case the Documentary Credit stipulates that one or more documents under such Documentary Credit be directly forwarded to the Beneficiary being the Client, then the Client shall produce all those documents to the Bank. If the Client after taking such documents or with the help of such documents so sent, takes delivery of the Goods, then notwithstanding any discrepancy in any of the documents to such Documentary Credit, the Client is deemed to have accepted the presentation in full and the Client shall pay at maturity against such Documentary Credit, irrespective of whether there is / was any discrepancy or matter which might have otherwise relieved the Client or Bank from their obligations.

3.15 In case the Bank effects payment to the Client being the Beneficiary on any Documentary Credit prior to maturity date at a discounted rate or on net present value of the receivables, then the Client shall be liable to pay the full amount on date of maturity and the Client shall bear the interest on such payment until payment thereof.

#### **4. PLACE AND MODE OF PAYMENTS AND CREDIT THEREFOR**

4.1 The Client authorises the Bank without reference to or further authority from the Client, to accept and/or pay on Client's account against all Documents underlying the Trade Transaction purporting to be presented under any Documentary Credit and, if applicable, all Drafts purporting to be drawn under any Documentary Credit, provided the same appears on its face, as determined by the Bank, to comply with or in accordance with the terms of any such Documentary Credit. Client further authorises the Bank to accept and/or pay at maturity all drafts drawn or purporting to be drawn in accordance with the terms of any such documentary credits. Notwithstanding validity of any Claim or pendency of any dispute in any court or arbitration, the Client accepts any Claim determined by the Bank as conclusive evidence to honour / pay and reimburse the amounts so paid by the Bank and Client shall be bound by the steps

taken by the Bank in good faith. The Client waives all claims for delay in examining the document or any omission or failure to identify the discrepancies against the Bank.

4.2 Notwithstanding anything contained in the Facility Agreement/s, all monies payable by the Client under these Terms shall be payable in equivalent rupees in lieu of foreign currencies. The Rupee sum shall be the Rupee equivalent of the foreign currencies to be remitted on the Due Dates exclusive of all commissions or other bank charges and out of pocket expenses as determined by the Bank. The Rupee sum shall be so paid by the Client as to enable the Bank to realise the amounts at par on the Due Dates. The Rupee sum shall be paid by the Client to the Bank at their concerned branch or as may be specified, by way of **NEFT / RTGS** or mail transfer to the account of such offices or by cheque /bank draft drawn in favour of the Bank or on a Scheduled Bank or to such other accounts as the Bank may notify to the Client and shall be so paid as to enable the Bank to realise the amounts at par. Credit for all payments by cheque /bank draft will be given only on realisation of the same. For this purpose a statement signed by a designated officer of the Bank shall be sufficient evidence of the Rupee equivalent of the foreign currencies, costs, commission, charges and expenses.

#### **5. CONVERSION OF FOREIGN CURRENCY LIABILITY AND COMPUTATION OF INTEREST AND OTHER CHARGES**

5.1 The Client agrees that as regards all amounts payable in foreign currency by it to the Bank's correspondents or agents under Documentary Credits issued from time to time under the Trade Services or for any moneys paid or disbursed or liability incurred in foreign currency by the Bank or its correspondents or agents under or in connection with such Documentary Credits, the rate of exchange applicable thereto shall be, in case of sight Documentary Credit, the rate prevailing on the day the concerned amount is actually paid/reimbursed by the Client to the Bank, its correspondent or agents as the case may be or the rate prevailing on the 10th day after the date or receipt of the negotiated documents by the Bank or if the rates are not quoted on the 10th day then the rate prevailing on the next working day when the rates are available, whichever is earlier, except in those cases where forward cover has been booked, in which case the Client's liability shall be governed by such forward contract and in case of usance credit, the rate prevailing on the day in which the concerned amount is actually paid/reimbursed by the Client to the Bank, its correspondents or agents as the case may be or the rate prevailing on the due date, whichever is earlier. The Client further agrees that in case the conversion of the foreign currency/liability of the Forward Contract Rate results in early/late delivery under the Forward Contract, charges for early/late delivery will be borne by the Client. On such conversion of the foreign currency amount into rupees, the Client shall be liable to pay to the Bank the Indian rupee equivalent of such foreign currency amount calculated as aforesaid.

5.2 Any difference on account of exchange fluctuations in the rates of foreign currencies involved between the payment made by the Client to the Bank and the actual amounts incurred by the Bank as referred to above shall be borne by or be given credit to the Client.

#### **6. NO LIABILITY**

6.1 The Bank and/or its agents, representatives, correspondents shall not be liable in any of the following events to the Client. However, the same shall not, in any way reduce the

obligations of the Client under the Trade Transactions and the obligations of the Client shall not in any way be affected, reduced or terminated by the occurrence of any of the following events:

i) Any invalidity, unenforceability or defect; a) in the agreement / arrangement or b) in the quality, quantity, merchantability of the Goods covered under the underlying Trade Transaction or c) delays, damage or loss in respect of any Goods or shippers charges in respect of such Goods or d) any falsity, inaccuracy, forgery in any demand or e) in the Drafts signed or f) in the invoices or in any other Documents underlying the Trade Transaction.

ii) any delays, errors or non- delivery in transmission of any Swift or other electronic communication, between Bank's agents, representatives or correspondents;

iii) any bankruptcy, insolvency or cessation of existence or liquidation of any party to the underlying Trade Transaction.

iv) any commercial practice or custom of any country in which Drafts are presented or negotiated for acceptance or payment or any variation in the instructions agreed between the Bank, its agents, representatives or correspondents or any confirmation or negotiation or otherwise granting any time, credit, indulgence or any other concession to any person by the Bank, its agents, representatives or correspondents;

v) the Client agrees that the Bank shall not be liable for any inability, illegality or impossibility in performance of any action under the underlying Trade Transaction or due to any Act of State or Government or any order, direction, judgment, decree, award or regulation or any other similar thing passed by any judicial or quasi-judicial, governmental or regulatory authority affecting the underlying Trade Transactions.

vi) any failure to obtain any licence or governmental approval which is required or appropriate in connection with the Trade Transactions or of these Terms.

6.2 Notwithstanding the possibility, existence, pendency or continuance of any disputes or difference or of any arbitration proceedings or any suit or other legal proceedings or otherwise whatsoever between the Client and the Beneficiary or beneficiaries, under all or any such Documentary Credits which may directly or indirectly arise out of or under or in connection with the subject matter/s of all or any such credits or which may affect the legality or validity of all or any such Documentary Credits and/or of any transaction/s directly or indirectly connected with or relating to or arising out of the subject matter/s of all or any of such credits, the reasonableness or propriety or validity of any such payments made by the Bank to such beneficiary or beneficiaries shall not be questioned by the Client on grounds related to such questions of legality or validity.

6.3 It is agreed and understood that all instructions and correspondence relating to the Documentary Credits to be issued/ issued are to be sent at the Client's risk and that the Bank its employees, directors, correspondents and agents are not responsible for any loss, errors or delays whether on the part of postal, electronic, airmail, or cable or internet companies, or electronic platforms or authorities or otherwise.

## 7. **INSURANCE OF THE GOODS**

Goods imported under the Documentary Credits will be insured in the manner mentioned in each of the Application(s) for issue of Documentary Credit. In the event that the Client fails to get the Goods suitably insured then the Bank may without prejudice to its rights mentioned in this Terms and Schedule/s and without being obliged to do so, be entitled to insure the same at the cost and expense of the Client. The Client shall be required to maintain and submit copies of all insurance receipts with the Bank.

## 8. **INDEMNITY**

8.1 In addition to the Indemnities available to the Bank under Clause 6 of these Terms, the Client hereby agrees to pay to the Bank on demand, all costs (including legal costs on full indemnity basis) customs duty, penalty, demurrage, storage charges, clearing and forwarding charges and all other charges and expenses which the Bank may be put to or suffer or incur in connection with the Goods and/or the documents of title to Goods covered by the Documentary Credits including for re-shipment thereof for any reason whatsoever, or in the exercise or enforcement of any right or power hereby conferred or otherwise howsoever, and further agrees and undertakes to hold the Bank safe and harmless and keep it indemnified against any claim, action or proceedings made or brought against the Bank, its correspondents or agents, as also against any liability or loss incurred or suffered by it, its correspondents or agents by reason of it having established the Documentary Credits.

8.2 Client hereby unconditionally and irrevocably undertakes to hold the Bank, and/or its successors and assigns, harmless and indemnified from and against all claims, losses, damages, charges, costs, expenses of whatsoever nature due to or incurred or defrayed by the Bank and/or its offices and by a nominated bank and consequences that could arise on account of the Bank carrying out /acting on any of the instructions of the Client which entails payment of any and all amounts by the Bank towards such claims, losses, damages, charges, costs, expenses of whatsoever nature due to or incurred or defrayed by the Bank and/or its offices and/or by a nominated bank or transfer of any amount in any currency to anyone under whatever name it may be called, including in the event such transfers attract withholding taxes in India under the provisions of the Income-tax Act, 1961 or under or pursuant to any other law in force from time to time, and shall do so without requiring any form of certification under the Income-tax Act, 1961 or under or pursuant to any other law in force from time to time.

8.3 Clients rights under the confirmations received from the Issuing Banks or the Buyers bank shall not be assigned or encumbered or be subjected to any third party rights except with the prior written consent of the Bank. If the Assignment by the Client of any right, title, claim or interest in the Documents or Goods or Insurances is not effectively assigned in favour of the Bank, then the Client shall hold in trust the remaining right, title, interest and benefit under such Documents, Goods, Insurances for the sole benefit of the Bank.

## **SCHEDULE 2**

### **GUARANTEES / INDEMNITIES / INSTRUMENTS**

The Bank has at the request of the Client issued and/or agreed to issue, as and when required by the Client, one or more Bank guarantee / SBLC, demand guarantee, bond, counter-guarantee,



counter-SBLC, Indemnities or similar independent payment obligations issued, confirmed or provided by the Bank (including any extension, renewal or amendment of the same) (each a "Guarantee") in favour of various third parties viz., Banks, Shipping Companies, various authorities and departments of the Central and State Governments, Semi-Government bodies, local or public bodies, and various other persons, companies, corporations or bodies corporate (the "Beneficiaries") as the Client may specify from time to time. It is however clarified that, despite availability of credit / sanctioned limits to the Client, the Bank has the right to refuse to issue any Guarantee or any further Guarantee of which the Bank does not approve at any time. The expression "Guarantees" shall unless repugnant to the context or meaning thereof be deemed to include all renewals, or extensions or modifications of all or any of such Guarantees.

In consideration of Bank having agreed to issue or issued Guarantees, the Client irrevocably and unconditionally agrees that:

1. If at the request of the Client, Bank issues any Guarantee to any Beneficiary, whether in the format as provided by the Client or as negotiated by the Bank and/or the Client or otherwise, the Client shall assume all obligations and liabilities under such Guarantee, without limitation to the validity / claim period mentioned in such Guarantee or any other terms as may be added by the laws or jurisdiction and Client confirms that the obligations / liability of the Client under such Guarantee shall be co- extensive and co-terminus with the obligations and liabilities of the Bank under such Guarantee.

2. It is the duty of the Client to examine the copy of each Guarantee entered into or issued by the Bank and the Client have the obligation to check the consistency of the Guarantee with the requirement of the Client. Bank shall not have any advisory role or otherwise to give any view or opinion as to the text of the Guarantee or the Obligations required to be assumed under that or with respect to or impact or effect of choosing any governing law or jurisdiction. It shall be the obligation of the Client to go through the Guarantee before requesting the Bank to issue the same in respect of any onerous clauses in the text of such Guarantees.

3. It shall pay the Bank commission at the rates as may be prescribed by the Bank:

- (a) till the Guarantees are duly cancelled and returned by the Beneficiary, or
- (b) till the Client provides a no due certificate from the Beneficiaries that no liability exists in their books, or
- (c) till such time the Bank either under law, precedent or contract is obliged under such Guarantee, or
- (d) if for any reason the Bank is prevented by any action initiated by the Client from making payment to the Beneficiary of the guaranteed amount, for such period of delay; together with interest, costs, charges and expenses (the legal costs being between Attorney/Advocate and Client) paid or incurred by the Bank in any way concerning all or any of such Guarantees.

4. The obligations of the Client shall not be wholly or partially satisfied or exhausted by any payments made to or settled by the Client from time to time to the Beneficiary of the Guarantees.

5. It shall not be open to the Client to question the authority of any person or persons who may have issued instructions to the

Bank on behalf of the Client for issue of the Guarantees unless such authority has been revoked and such revocation has been duly communicated to the Bank in writing.

6. The liability incurred by the Client hereunder, shall not in any way be prejudiced or affected by any change in the constitution or composition of our company or of a partnership firm whether by death or retirement or insolvency of any partner or by admission of any partner or partners or otherwise howsoever.

7. If any Guarantee contains renewal or extension clause and the Client does not inform the Bank or give instructions in respect thereof 5 business days prior to such date for renewal or extension then the Bank may renew or extend such Guarantee for a period of one year or for such term as the Bank may determine. However, the Bank shall not be obliged to issue any extension or renewal and may choose to cancel or revoke the Guarantee by making payment under such Guarantee without any intimation to the Client, if the Beneficiary permits or such Guarantee provides for cancellation either in full or part. Further, the Bank may also choose to pay any Guarantee without any intimation to or consent from the Client, if the Guarantee or any Law requires payment under such Guarantee or if there is no provision for extension / renewal. Any payment under those circumstances i.e. cancellation, payment, revocation shall be without prejudice to the rights of the Bank and obligations of the Client under these Terms.

8. If at the request of the Client, Bank issues any Counter Guarantee / Counter SBLC or Counter indemnity to any Bank or financial institution or to its Correspondent bank or to any of its offices or agents for issuance of a Guarantee / SBLC / Indemnity, whether in the format of the Guarantee / SBLC / Indemnity provided by the Client or otherwise, then the Client shall assume all obligations and liabilities under such Guarantee / SBLC / Indemnity so issued by such bank or financial institution or its Correspondent bank or any of Bank's offices or agents, without limitation to the Claim period mentioned in the Counter Guarantee / Counter SBLC or Counter Indemnity or any other terms as may be added pursuant to the laws or jurisdiction governing such Counter Guarantee / Counter SBLC or Counter Indemnity. Further Client confirms that the obligations / liability of the Client under such Counter Guarantee / Counter SBLC or Counter Indemnity shall be co-extensive and co-terminus with the Guarantee / SBLC/ Indemnity so issued.

9. The Bank may notwithstanding any dispute or amount involved or validity of any Claim made by the Beneficiary and without any reference or authority from the Client or any other party, accept, honour and pay any demand or claim made under the Guarantee without enquiring whether such claim is properly made or not. The Client accepts any Claim accepted and paid by the Bank as conclusive proof and any action taken in good faith including payment made thereunder shall be binding on the Client.

10. If the Bank determines that any presentation of Documents underlying the Trade Transaction taken as a whole appears on the face of it to be in order and/or confirms to the requirements mentioned in the Guarantee, then the Client confirms that it shall waive all its rights and defences against the Bank for any delay or failure to examine any discrepancies which may exist.

11. Upon notification of any discrepancies, if the Client requests the Bank or its correspondent bank or its agent, notwithstanding such discrepancy, to make payment or countersign or issue any indemnity or guarantee, in such an event Client agrees and confirms that it shall indemnify or make reimbursement to the Bank as per the provisions of these Terms.

12. The Bank may reject any Claim / Demand, without any reference to the Client or any other person, which the Bank may in its sole opinion determine does not comply with the requirements and it is understood that the Bank need not notify the Client regarding the decision of the Bank to reject any Claim/ Demand or regarding the discrepancies before refusing such Claim / Demand. However, in the event Bank follows a process of intimating the Client about the rejection of Claim / Demand in one or more cases then the same shall not obligate the Bank to seek waiver of any discrepancy from the Client or to intimate the Client regarding the rejection of any Claim / Demands.

13. Client confirms that the Bank may in relation to any Guarantee, agree to amend, extend the Guarantee for further periods without in any way increasing the liability of the Client. Further the Bank shall be entitled, subject to the consent of the Beneficiary, to cancel the whole or any part of the Guarantee/s so issued.

14. Client confirms that the Bank may restrict the availability, or advising or confirmation of any Guarantee more particularly in case of SBLCs to its offices or any correspondent bank or agent of the Bank of its choice and refuse to honour or make payment under any Guarantee which is purported to be drawn or drawn on third party banks or financial institution.

15. If the Terms of Guarantee / SBLC in particular, permits payment to be effected whether expressly or impliedly for payment before the receipt of Documents delivered under such Guarantee / SBLC, upon payment by the Bank or its correspondent banks, the Client irrevocably agrees to make payment on the maturity date with interest accrued on such payment until payment thereof.

16. To pay to the Bank immediately on demand, without demur and/or contestation, and notwithstanding any dispute that the Client may have as to its liability to the Beneficiaries of the Guarantees, all the amounts which the Bank may be called upon to pay from time to time under or in connection with all or any of the Guarantees and all other moneys arising there from with interest at 2% p.m. or such other rate or rates of interest as may be prescribed by the Bank from time to time.

17. To keep the Bank fully indemnified and saved, defended and harmless from and against each and every payment made and obligation, liability contracted and all actions, losses, claims, demands, duties, penalties, damages, costs, charges, expenses and other liabilities whatsoever which may be brought or made against or sustained or incurred or suffered by the Bank (whether directly or indirectly and whether paid by the Bank or not) under or in connection with or by virtue of the Bank having issued all or any of the Guarantees and in enforcing or attempting to enforce the rights under these Terms.

18. Except in the event of the Bank being restrained from doing so by an order or injunction of a competent court, of which the Bank shall have proper notice, the Bank shall be entitled, at its absolute

and unfettered discretion, without any reference to or obtaining the consent of the Client and notwithstanding any direction given by the Client or any other person to the contrary, to make payment of whole or part of the amount of the Guarantees or any of them as may be called upon by such Beneficiary without going into the question of validity, propriety or legality of the said demand and without any reference to the Client or obtaining the consent of the Client. The Client shall not have any right to question in any way and for whatsoever reason the Banks making such payments and the Client shall always be bound by it. Any request or demand made to or upon the Bank by the Beneficiary or Beneficiaries of all/or any of such Guarantees, for payments of any sum or sums of money shall be sufficient authority from the Client for the Bank making such payment/s and no separate authority will be required from the Client.

19. The Bank shall at its sole discretion and without reference to the Client, admit and put or submit to dispute or resist any claim or demand made against the Bank under or in respect of the Guarantees, irrespective of whether a counter guarantee/ SBLC / indemnity being available to the Bank in respect of any action which may be taken against the Bank and the Client also agrees to pay the Bank on demand with interest, as mentioned earlier, all such moneys that the Client is liable to pay the Bank.

20. The Bank may proceed against and recover from any of the Client's property including any credit balance in any account, whether Current/Savings or Time Deposit, or any other accounts whatsoever or any security for the time being held by the Bank, by sale or otherwise and to allocate and apply the net proceeds of sale and realization thereof and any other money/s standing to the credit of the Client in such order and in such a manner as the Bank may think fit, in or towards payment of any amount payable by the Client to the Bank. This shall be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter to be held by the Bank on account or in relation to the Guarantee.

21. Obligations of the Client hereunder will extend to any amendment / modification / extension of the Guarantee/s for which the Client may apply from time to time and which the Bank may agree to grant on such application subject to its absolute rights and discretion whether to extend the Guarantee/s or not, without casting any obligations on the Bank for extending the said Guarantee/s.

22. The Client hereby agrees and confirms that the credit limit for issuance of Guarantees, as mentioned above (being non-fund based limit), is uncommitted. Accordingly, notwithstanding anything contained to the contrary herein, whether or not any such unutilized portion of the non-fund based limits is to be made available by the Bank, shall be determined by the Bank at its discretion and that Bank has unconditional right to cancel any such unutilized portion of the non-fund based limits either fully or partially without prior notice.

23. The giving or granting of time or any extension thereof to the Client or the omission, delay or forbearance on the part of the Bank in requiring or enforcing payment of any moneys due hereunder or any other variations, modifications or amendments between the Client and the Bank shall not in any way prejudice, limit, restrict or affect the obligations of the Client hereunder and the Client shall be considered as a principal debtor in respect of all the Guarantees covered issued under these terms.

### SCHEDULE 3

#### LETTERS OF INDEMNITY / SHIPPING GUARANTEE.

In consideration of Bank having agreed to provide / provided any Letter of Indemnity or Shipping Guarantee to any third party, at the request of the Client, for taking delivery of goods without production of documents to the title of goods, Bills(s) of lading, airway bills or without any requirement on the part of the Bank to endorse or counter sign any warehouse warrants, airway bills, switch bills of lading or any documents of like nature to enable the Client to take delivery of the goods, without Documents underlying Trade Transaction etc. (Letters of Indemnity / Shipping Guarantee) the Client irrevocably agrees and confirms that:

- 1) By taking delivery of the Goods, on the basis of the Letter of Indemnity / Shipping Guarantee, the Client shall be deemed to have accepted all discrepancies in the Documents underlying the Trade Transactions notwithstanding the discrepancies in the Documents underlying the Trade Transaction and quality, quantity, merchantability or use of Goods for any specific purpose, agrees that it shall pay the amounts upon presentation.
- 2) the risk in taking delivery of Goods without Documents underlying Trade Transaction is well understood by the Client including the risk of unlimited liability for an unspecified time before seeking issuance of such Letters of Indemnity / Shipping Guarantee and agrees to be liable to for all consequences and loss that may arise not only from such third parties to whom such letters of Indemnity / shipping Guarantee was issued but also from the owner and other persons who claim to have suffered the loss or damages in the Client so obtaining delivery of the Goods.
- 3) the Bank shall be indemnified against all losses, claims, liabilities, damages, proceedings actions, costs and expenses and against all payments which may be made by the Bank arising out of and in relation to the issuance of such Letters of Indemnity / Shipping Guarantee in honouring or defending such Claims.
- 4) the Client shall endeavor to obtain documents relating to the title to the Goods and other documents relating to or representing the Goods and submit the same to the concerned third party beneficiaries to whom Bank has issued the Letters of Indemnity or Shipping Guarantees and obtain the release in favour of the Bank from its obligations under such letters of Indemnity / Shipping Guarantee and obtain return of such Letters of Indemnity or Shipping Guarantees, duly cancelled by the Beneficiary, in original for Bank's records.
- 5) Bank shall be entitled to recover the commission and other charges until return of the original Letter of Indemnity or Shipping Guarantee including the amounts paid under such Letter of Indemnity or Shipping Guarantee and the Client agrees that it shall remain liable and agrees that its liability under such Letters of Indemnity / Shipping Guarantees is co-terminus and co-extensive with that of the Bank.

### SCHEDULE 4

#### DOCUMENTARY COLLECTIONS UNDER URC 522

- 1) At the request of the Client, Bank may provide Trade Service of "**Documentary Collections**". Such collections shall be

in accordance with the URC 522 and notwithstanding anything to the contrary, the Bank may in its sole discretion decide whether or not to provide such Trade Service depending on the relationship of the Bank with the counter party bank, the country and other risk factors.

- 2) If the Bank at the request of the Client agrees to send the export documents to the Buyer's Bank ("**Collecting Bank**") along with instructions for obtaining the payment from the Buyer in terms of URC 522, then the Client irrevocably and unconditionally agrees that:

- a. the Buyer's Bank i.e Collecting Bank or settlement bank or other bank shall be the agents of the Client and it shall not hold the Bank liable for any act or omission or default on the part of the Collecting Bank or any settlement bank or other bank used in the process for providing Documentary Collection service by the Bank (irrespective of whether they are selected by the Client or recommended by the Bank) or resulting from the Client choosing an incorrect Collecting Bank or settlement Bank.

- b. It has chosen to send the export documents under Documentary Collections route than under the Letters of Credit route by clearly making a choice on the creditworthiness of the Buyer and has not chosen any bank to take the payment risk/default risk of the Buyer under any Letters of Credit or otherwise.

- c. The export documents sent through Documentary Collection route will be delivered by the Collecting Bank i.e. Buyer's Bank to the Buyer as per the instructions mentioned on the '**Delivery instructions**'. The Delivery Instructions will contain provisions for delivering Documents against acceptance of Bills of Exchange ( D/A) or Delivery of Documents against Payment (D/P), as the case may be. The Collecting Bank will deliver the Documents to the Buyers as per the Delivery instructions without assuming any credit risk in case delivery of export documents is against the acceptance of Bills of Exchange. In case of delivery against acceptance, Client understands that the role of Collecting Bank is limited in the Documentary Collections under URC 522 and understands that the Collecting Bank does not guarantee repayment of the amounts from the Buyer in case the delivery of export documents is against acceptance of Drafts / Bills of Exchange. In such case, Collecting Bank will only send the amounts to the Client, if and when the amounts are paid by the Buyer.

- d. Client shall send the collection documents under the format given by the Bank or as agreed by the Bank and also agrees that the Bank is not required to examine or review the export /collection documents before sending them to Collecting Bank.

- e. Bank shall not be under any obligation to do or arrange to do, through any of its correspondents or agents, the presentment, noting and protest of the Bills of Exchange or other negotiable instruments in case of non-payment by the Buyer.

- f. Bank may send the documents to the Collecting Bank through any of its correspondent banks on the terms and conditions of, or as may be acceptable to, such correspondent Bank in addition to these Terms.

g. The Bank shall not be liable for any delay or default in payments of amounts due under the collection documents or non-acceptance of the collection documents by the Buyer or Collecting Bank.

h. upon receipt of funds from the Collecting Bank, apart from the charges paid to the Bank for sending the Collection Documents, the Bank may deduct the conversion charges etc. before crediting the net proceeds to the account of the Client.

i. It understands that the Bank is not liable to pay until proceeds under the collection documents are actually received by the Bank. If the Bank either on the basis of drawing power or on the basis of the future receivables under the collection documents extends any credit facility, it is clearly understood that the repayment of the same is not dependent on the receipt of payment from the Buyer through Collecting Bank.

j. Client understands that under the Documentary Collections, Bank does not assume the credit risk of the Buyer. However, upon receipt of such funds, the Bank shall be entitled to use those proceeds, as it may deem fit, for any Indebtedness of the Client to the Bank, notwithstanding whether such Indebtedness is secured or unsecured, before transferring proceeds of such Documentary Collection to the account of the Client.

k. Bank shall not be required to assume any responsibility or take any care beyond the duty and is only expected to exercise reasonable care, in sending the collection documents submitted by the Client under Documentary Collection either directly or through any of our offices or branches or correspondent banks or agents to the Collecting Bank. Sending of export documents to the Collecting Bank under Documentary Collection involves engaging overnight / international courier services who shall be agents of the Client and the Bank does not assume any responsibility for the transit loss or destruction either in full or in part of the export documents and the Client shall indemnify the Bank, as per the Indemnity Clause 6 under these Terms, in respect of any claim, loss, liability or expense howsoever arising from or in connection with Bank providing service in sending the export documents to the Collecting Bank.

2. In the event the Client requests the Bank to undertake the Collections for its import transactions under the Documentary Collections route or the Remitting Bank of the Client's exporter present the documents for collection under URC 522, then the Bank will only accept the transaction or agree to provide Trade Service on the irrevocable understanding that

a. Client shall do the settlement only through the Bank;

b. Bank is authorised to debit the account of the Client on the date of payment;

c. Collections Documents will not be released (irrespective of any loss or damage that may be caused to the Client) unless the Client's account is credited with the sufficient amount for the Bank to debit the full amount payable or in case the collection advice mentions release of documents based on acceptance of Bills of Exchange until such time the Bills of Exchange are duly accepted.

d. Client agrees and confirms that the Bank shall not have any duty or obligation to check or review the documents so received from the Seller's bank i.e. Remitting Bank as to whether they meet the requirements and standards stipulated under the collection documents or not; or required to give or view or opinion in that regard.

e. In case the Bank does any of the above activity, the same shall be on 'no responsibility' basis notwithstanding any fee charged by the Bank in that regard. Client hereby specifically agrees and acknowledges that it shall not hold the Bank liable in any manner howsoever either in contract or in tort for any loss or damages suffered by the Client.

f. The Client shall indemnify, as per the Indemnity Clause 6 under these Terms, for any loss suffered by the Bank in handling the Collections Documents and shall not make any demand for any loss or damage etc suffered by the Client against the Bank for following the instructions of the Remitting Bank under the Collection Documents.

## **SCHEDULE 5**

### **REMITTANCES**

Client shall have read and understood the Terms and conditions available on the Bank's website, (A copy of the latest Terms and Conditions can be obtained from the Bank's website) before giving any Instructions to the Bank. Bank reserves the right to amend the terms and conditions from time to time and upload the same on its website. The Client understands that such uploaded Terms and conditions shall be read and understood before giving any further Instructions.

Client agrees that the Bank will act as a facilitator for making the Remittance transactions on behalf of the Client subject to the applicable Exchange Control Laws at the risk and responsibility of the Client. The provision of remittance service shall be subject to the Exchange Control Laws, terms and conditions, currency limits, national and international laws. If the Client does not provide additional information or further documents as required by the Bank, or its correspondents, agents and intermediaries in respect of the Remittance transactions initiated by it, then the Bank may withhold the Remittance transaction at the complete risk of the Client ( i.e. exchange rate risk, interest and other charges risk etc) and not providing such information or documents to the satisfaction of the Bank or required to comply with the legal requirements of local or international Exchange Control Laws may make the Remittance transaction liable for cancellation either at the end of the Bank or its correspondents, agents and intermediaries both under domestic and international Exchange Control Laws. The onus is on the Client to comply with the above requirements and the Bank shall not have any liability for any demands, losses, actions, costs, damages that the Client may suffer in respect of the Remittance transactions initiated by it. All the costs, losses, charges, penalties etc in respect of the Remittance transactions initiated by the Client will be that of the Client and will be debited to the account of the Client.

It is the complete responsibility of the Client to ensure all the information and documents provided by the Client are accurate,

correct and complete in all respects and the Bank shall not be held liable for acting on the inaccurate, incorrect and incomplete details provided by the Client in respect of any Remittance transaction. It is the sole responsibility of the Client to ensure all the details of the Beneficiary Account details and account numbers are correct. As the SWIFT processes the Remittance transaction on the account number only, the Bank may not be able to assist in recalling or cancelling the Remittance transaction once the amount is credited to the wrong account number. Thereafter, such bank will not be agreeable to reverse the Remittance transaction or debit the account to which the money wrongly gone into except with the consent of that account holder or an order from any statutory authority. In any event including the above, the Bank shall not be responsible for any delay in withholding of the funds for any reason whatsoever by the foreign banks or other intermediaries or agents. The Bank shall not guarantee any return of funds to the Client. The Client may in such an instance furnish all the information and documents to the satisfaction of such foreign banks and other intermediaries or get an order from the statutory authorities in that jurisdiction to compel the return of funds remitted by the Client.

Foreign currency availability may be subject to the limits as may be imposed under Exchange Control Laws and the same can be against any currency or client specific, limit specific or transaction specific or may be subject to approval by RBI or other regulators. Drawal of any foreign exchange shall be subject to the extant Exchange Control Laws prevalent in the jurisdictions where the Remittance transaction is required to be processed or routed through including the jurisdiction of the destination to which the remittance is required to be made to the beneficiary. Breach of any Exchange Control Laws may attract both monetary and penal liabilities, hence the Client shall be fully responsible to ensure that the Remittances transactions including Instructions are fully compliant with the Exchange Control Laws. The Client understands that Bank is not liable to scrutiny the intent and purpose of any Remittance transaction nor it is obliged to check the correctness of the Remittance transaction in terms of Exchange Control Laws of various jurisdictions through which the Remittance transaction will have to pass through for completing the Remittance transaction or for effecting the remittance to the Beneficiary. The Bank will be doing the transaction in good faith on the basis of the declarations and undertakings and indemnities given by the Client to the Bank for processing the Remittance transaction and the Client agrees to indemnify the Bank, its correspondents, agent and intermediaries from any loss, damage, penalty that the Bank may be subjected to due to any violation by the Client of the Exchange Control Laws. The Bank shall be entitled to close the account of the Client without prior notice or apply freeze both credit and debit freeze if the Bank reasonably believes that there is any violation whether actual or imminent on the part of the Client in complying with the Exchange Control Laws and the Bank shall at all times, without any notice to the Client may report about all or any of the Remittance transactions or conduct of the Client or any matter relating to purpose and intent in doing such Remittance transactions to Reserve Bank of India or any other statutory authority of Government of India or any overseas bodies, Governments and/or regulators.

Customarily banks adopt, various methods including but not limited to, email, telex, cable, SWIFT or any other electronic/physical modes of transmission for effecting the Remittance transaction which includes communications with its

correspondent bank, intermediary, agent or sub agent in various jurisdictions in which the remittance is either required to be made or passed through or processed. The Bank shall be free to determine the methods and modes of transmission and communication to be adopted on behalf of the Client for concluding the Remittance transaction. The Client understands the risks involved in various modes of communication including the electronic transmission stated above and agrees that the Bank, its correspondents, agents and intermediaries shall not be liable in any way for any loss, delay, failure, return of the amounts remitted due to any issues relating to the electronic transmission or processing of Remittance transaction through electronic media and the Client undertakes to be liable or accept such risks that arise due to hacking, interruptions, errors, omission or owing to delay on the part of the courier, postal, cable or wireless company or their employees or agents etc in sending the message or misinterpretation of the message or errors, omissions, commissions in transmission of the messages.

**Instructions:** The Client shall from time to time appoint or remove by mandate one or more Authorised Officer to give instructions to the Bank hereunder. The Bank is entitled to act on the instructions, directions or other communications given to it by any of the Authorised Officer until the Bank receives from the Client a revocation notice in respect of any such Authorised Officer(s) and has had a reasonable time to act upon such change. The Bank shall use all reasonable endeavours to act in accordance with the instructions of the Authorised Officer. Where two or more persons are appointed, the Bank may act on the instructions of any one of them unless otherwise specified by the Client.

The Client may place a remittance request by providing the information as may be required by adhering to the information security requirements of the Bank, either by contacting over the telephone on recorded lines by an Authorised Officer of the Client by any of the following methods specified below:

- a) a written instrument executed on behalf of the Client by the Authorised Officer. However, in case of physical signatures the Remittance transaction is required to be processed manually and not through the Platform;
- b) through instructions on the internet;
- c) logging into Client's account on the Platform/portal
- d) a telex or facsimile message;
- e) SWIFT/SFMS messages;
- f) by any other method agreed upon in writing by the Client and the Bank.

The Bank may refuse to act on any Instruction given by the Authorised Officer pursuant to these terms unless such Instruction is given in the form specified in sub-paragraphs (a), (b), (c), (d) (e) or (f) of paragraph above or upon the consideration by the Bank that taking action upon the Instructions would result in the Bank incurring liability and the Bank shall have no responsibility to determine the authenticity of any Instruction given or purported to be given by the Authorised Officer. The Bank shall be under no duty to assess the prudence or otherwise of any Instruction given by the Authorised Officer or to give any advice in relation thereto and may act on the Instructions of the Authorised Officer irrespective of their prudence or otherwise. If, notwithstanding this paragraph, any employee of the Bank gives

any advice or makes any representation to the Authorised Officer and/or the Client, the Bank shall have no liability for such advice or any representation so made.

The Bank shall not be required to enquire as to the authority or entitlement of any such person to give Instructions, which the Bank believes are given or made by such person who is or who is believed by the Bank to be a person who is authorised or entitled to give Instructions.

The Client agrees that the Bank shall not be liable for any losses, damages, expenses, costs, liabilities and claims of whatsoever nature caused either by the unauthorised use or forging of any Authorised Official's login credentials or, arising from any error or ambiguity in any Instructions received by the Bank.

**Remittance request:** Client's remittance request constitutes an invitation from Client for the Bank to negotiate a Remittance transaction with the Client. The Bank's response to Client's remittance request represents a legal offer from the Bank for Client to enter a Remittance transaction subject to certain conditions set out in the offer. This offer must be accepted by the Client, following which the Contract is formed subject to these Terms and Conditions. Confirmation of the Contract shall be emailed to Client by the Bank after the remittance has been processed.

Generally, the Bank will process foreign exchange transactions (whether submitted physically or on platform) on T+1 business day basis, once all the required details / documents are submitted to the Bank, subject to there being no force-majeure or an event not in the control of the Bank. However, Bank may endeavour to process the transactions, on the same business day, which are received before the Cut-off time which is 2PM on any business day in the concerned location of the Bank, if the transactions are in compliance with the Exchange Control Laws and there are no discrepancies in the documents and all the transaction details supplied to the Bank.

Notwithstanding the formation of a Contract, Bank hereby reserve a contractual right to delay or not to complete the execution of the Remittance transaction in instances where:

- a) abnormal and unforeseeable circumstances beyond Bank control or prohibit or limit the Bank executing the Remittance transaction;
- b) legal obligations covered by applicable laws and Exchange Control Laws make the execution of the Remittance transaction a potentially illegal or non-compliant action;
- c) Bank Anti-Money Laundering Policy requires so, or where any requirement under Bank Anti-Money Laundering Policy cannot be met to Bank's satisfaction;
- d) due to the automation of the Remittance transaction, errors in quoted rates may have occurred leading to the provision to Client of erroneous rates at the time of placing the remittance request.

Bank shall endeavour to inform the Client as soon as possible in the event of non-execution of the Remittance transaction the reason for the failure of processing the Remittance transaction to the Client unless the Bank is prevented (in Bank sole discretion) from disclosing the same. The Bank shall endeavour to complete the Remittance transaction if the impediment preventing

execution can be removed, or where applicable, when the errors, inaccuracies or omissions are corrected.

**Exchange Rate:** Any Remittance transaction is subject to the risks of currency rate fluctuations and interest rate fluctuations which are dynamic in nature and fluctuates in seconds. The Client understands these risks and after having agreed to the same only, has given Instructions to the Bank for processing the Remittance transaction with a clear understanding that any loss under the Remittance transaction will be passed on to the Client being the applicant and the Bank will have the irrevocable authorisation to debit the account of the Client for such amounts. The rate that appears on the Net banking platform at the time of doing the Remittance transaction may vary with the TT selling rate of the Bank that was published on the Net Banking platform at the time of debiting the account of the Client for making remittance. Applicable foreign exchange rate in respect of any Remittance transaction shall be the applicable rate of the Bank for any particular currency as against the INR at the time of processing the Remittance transaction and the details of the actual rate applied will be sent to the Client by way of an advise / communication from the Bank and the Client confirms that it shall not dispute the same in any manner howsoever. Further, the correspondent banks/ intermediaries involved in processing the Remittance transaction may also be required to perform further actions including conversion of currencies to facilitate the processing without reference to the Client or the Beneficiary and any costs or charges will also be deducted from the account of the Client.

**Commission and Charges:** as per the schedule of charges of the Bank or as otherwise agreed between the Bank and the Client along with TCS and GST and other charges as may be applicable to the Remittance transaction.

**Foreign Bank Charges:** Bank will deduct the charges payable to foreign banks, correspondent banks, agents and intermediaries involved in the Remittance transaction, as per their rates along with taxes and levies, if any, which are payable as per the applicable laws and regulations of that foreign bank, correspondent banks, agents and intermediaries in the foreign country. The Client understands that unless those charges are paid, the Remittance transaction will not be processed at their end and hence upfront deduction of these charges are required to be done so as to ensure that the Beneficiary receives the required amount without any deductions from the foreign banks, correspondent banks, agents and intermediaries.

In view of the Exchange Control Laws, Remittance transactions made by the Client are subject to the Exchange Control Laws of various countries or jurisdictions, where the payment is to be made or is required to be passed through or processed. Banks or its correspondents, agents and/or intermediaries shall not be liable for any loss, delay (including the failure of any clearing and settlement system), forfeiture, cancellation or otherwise of the amounts under the Remittance transaction, or due to any other causes whatsoever.

**Return of Remittance:** If for any reason the remittance made is returned to the account of the Client, irrespective of the reasons attributed to such return including the returns from the correspondent bank or agent or intermediary of the Bank and notwithstanding the fact that such return is wrongly made, erroneously made or return without a sufficient cause, then such

remittance will be converted into the INR at a Bank TT selling rate of the Bank for buying such currency at a rate prevailing at the time of processing of such refund less any charges or fees levied by the overseas banks involved in processing such remittance or return.

**Limitation of Liability:** The Bank will be liable only for direct damages arising out of gross negligence (i.e marked and flagrant departure from the conduct which an ordinary prudent man under similar circumstances acting for the Bank would have acted otherwise or willful or reckless conduct knowing that it will cause harm or injury which can be otherwise avoided), fraud arising out of action by the Bank. Bank will not be liable for any other direct damages. Under no circumstances, the Bank will be liable for any direct or indirect, consequential loss, damages, or claims, loss of profits / revenue or any other loss of foreseeable business opportunity or be liable for special, punitive damages.

**Debit Authorisation:** The Client understands that all the risks losses, costs, damages, charges what soever incurred by the Bank including the commissions, omissions by the Bank or its correspondents, agents and/or intermediaries both domestic and international, will be to the account or at the risk and responsibility of the Client and the Client hereby specifically authorises the Bank to debit the account of the Client. Notwithstanding the fact that such debit may result in overdraft to the Client's account.

**Disclosures:** Bank only accepts the Remittance transactions from the Client under the explicit understanding and consent, which the Client hereby gives, for providing the both inward and outward remittance services, Bank is required to disclose the personal details including but not limited to the name, address, contact numbers, nationality (both original and acquired citizenships), country of residence etc along with the nature of the Remittance transaction, documents and information submitted in relation to the Remittance transaction, beneficiary details as provided by the Client to various banks including correspondent banks, agents and intermediaries, both domestic and overseas, and also required to provide the information to its auditors and other service providers who provide services to the Bank for processing the Remittance transaction or for submitting the statutory reports that are required to be submitted to various statutory, regulatory authorities, various governments, government agencies / bodies, regulators and also to authorities enforcing the Exchange Control Laws. The Client hereby agrees that the disclosures under this Schedule are in addition to the disclosure terms mentioned in para 24 of these Terms and Privacy Policy and Privacy Notice of the Bank uploaded on the Bank's website [WWW.Kotak.com](http://WWW.Kotak.com)

In line with the above understanding, the Client irrevocably concurs, agrees and understands that:

1. The Bank acts as an Authorised Dealer under the extant Exchange Control Laws for processing the Remittance transactions, without assuming any risk, based on the Instructions of the Client.
2. It shall in all circumstances provide complete, true and correct information and documents in respect of the Remittance transaction and shall be liable in all respects for such information and documents so provided for processing the remittances. The Declarations, Forms like A1 A2 or other forms and declarations or undertakings which are required to be submitted in

terms of the Exchange Control Laws shall be true and correct in all respects.

3. **Client understands that it will be personally liable for both civil and criminal actions that may trigger due to furnishing any wrong declarations or incorrect information whether of personal, Beneficiary or about the Remittance transaction.** Client agrees and confirms that processing of any such Remittance transaction in good faith by the Bank does not make the Bank in any way responsible for pecuniary or penal provisions and the Client indemnifies the Bank against all such charges, fines, levy imposed by the statutory authorities in terms of Exchange Control Laws.
4. Remittance transactions are subject to a minimum and maximum transaction value determined by the Bank, and Bank may decline to negotiate a Remittance transaction request which falls outside of these value points, notwithstanding that prior remittance requests of equivalent value were not declined and Bank may notify the Client of Bank's refusal to negotiate a Remittance transaction request without giving any reason. The Bank will have no liability to Client as a result of doing so.
5. Any delay on the Client's part in providing information and documentary evidence of the Client's underlying commitment in order to obtain approval under Exchange Control Laws by the settlement date will, without exception, prevent a settlement and could result in possible costs to the Client's account and/or the Client's payment not being effected timeously, in which case the Bank will not be liable for these costs or for the Client's payment not being effected timeously.
6. The Client will promptly ensure compliance of the security measures that are required to be taken by it or its Authorised Officer while giving any Instructions on the Platform / portal designated for this purpose, as per the terms stated herein.
7. Any quotes given by the Bank with respect to the forex rate are subject to variation every minute and the Client understands that the TT selling rate of the Bank applied at the time of processing the Remittance transaction shall be the forex rate applicable for that particular Remittance transaction.
8. The remittance facility will be available only to the Clients who has completed the full KYC requirements of the Bank and who are eligible to draw foreign currency or foreign exchange and remit the foreign currency and/or foreign exchange for the permitted current account and capital account transactions under the Exchange Control Laws.
9. Processing of any Remittance transaction shall be done on the basis of the prevalent Exchange Control Laws.
10. The Bank is in no obligation to extend credit or process the Remittance transaction if sufficient free funds are not available in the account of the Client.

11. The Bank is not obliged to take up any recall requests for the transfers already processed, even if the Bank does take up any recall request upon payment of necessary fee and charges, Client understand that the Bank does not guarantee any return of such funds so remitted.
12. Bank will not be liable to execute a Remittance transaction; in case if the Bank is of the opinion that processing of such Remittance transaction may result in losses, damages, incurring of charges in any manner howsoever; in case there is no sufficient balance in the account of the Client to process the Remittance transaction; if any Instruction is incomplete or incorrect as per the sole discretion of the Bank; the Remittance transaction is in violation of Exchange Control Laws; if the same cannot be processed due to any order from any statutory authority or court or tribunal; due to non availability of internal systems including the non receipt of the information/Instructions from the Client systems to the Bank systems, SWIFT network or any payment transmission mode or any act or thing which is beyond control of the Bank.
13. The Bank may refuse to grant access to the platform/portal or refuse to process the Remittance transactions either temporarily or permanently or in respect of any merchants or class of merchants dealing in any products or services or owing to the violation of Exchange Control Laws by the Client.
14. The Client shall not use the remittances for any purpose other than for which they are received or made nor shall be used for any restricted or prohibited purpose in violation of Exchange Control Laws.
15. The Bank is required to deal with or interact with the foreign banks, intermediaries, correspondent banks and agents or financial service providers to which or from whom the remittance Instructions are made or received for providing the remittance services and the Bank shall not be in any way liable for any loss, delay, damage, delay in transmission delivery or non-delivery, commissions, omissions or error in transmission, misinterpretation, wrong processing of the instructions by the said third parties stated above.
16. If the Client is required to obtain any approval for any Remittance transaction from the authorities under the Exchange Control Laws and the Client fails to submit such approval to the Bank on a working day preceding the settlement date of the Remittance transaction then the same will affect the settlement and may result in costs and/or loss being incurred by the Bank for making provision for foreign currency or foreign exchange for carrying out the Remittance transaction. Such losses and costs will be debited to the account of the Client.
17. Further the Client understands that while remitting the amounts on behalf of the Client, it may be possible that there may be delays owing to the withholding of funds or delay in application of funds by the foreign banks including owing to the regulatory and administrative

issues at their end. The Bank shall not be responsible for any loss or damage suffered by the Client in such withholding or delay in remittance of the amounts to the Beneficiary by such foreign banks.

#### **Inward remittance.**

Once the remittance on behalf of the Client is received by the Bank either in its Nostro or any other account, the Bank will intimate the Client regarding disposal instructions for the remittance so received along with the required documentary proof to claim such remittance. The Client shall identify the inward remittance processed by the Bank at the earliest possible time not later than 5 (five) Business Days from the date of receipt of such intimation from the Bank and submit the documents and proof relating to such inward remittance. Client understand that till such time the Bank may mark hold on the funds and shall not be taken into consideration for any payment that may hit the account of the Client and consequently the Bank shall not be liable for any returns that occurs in the account of the Client due to insufficiency of clear funds. If the disposal instructions along within the documentary proof is not received by the Bank within 5 (five) Business Days from the date of intimation of the Bank then the Bank may as per its process return the money to the account of the remitter without being liable for any loss or damage that may be caused to the Client. If the remittance does not belong to the Client, it is the duty of the Client to promptly inform the Bank before utilising such amount. Any violation in this regard will result in fraud charges levied against the Client by the Bank.

If any inward remittance is claimed back or cancelled or recalled by the remitting bank for any reason whatsoever including the instructions by the sender, then in such case Bank shall be entitled to put a freeze or hold on that amount and debit the account of the Client (if already credited) for sending the same to the remitting bank. Till such time the recall / cancellation request from the remitting bank is finalised the amounts so received by way of inward remittance will be kept on freeze / hold in the account of the Client. It is agreed that it is the responsibility of the Client in such cases to truthfully claim such amounts with supporting evidence and if required by furnishing the required orders / injunctions from the statutory authorities in order to retain the funds on hold/ freeze until final disposal of the proceedings by such statutory / regulatory authorities.

Client understands that the Bank shall not be liable for any losses, damages, legal actions and costs including the exchange rate fluctuations, interest and other losses incurred in keeping the amounts till the disposal instructions are received by the Bank to its satisfaction or due to freeze/ hold of funds so received. In case the remittance is required to be returned back to the remitting bank then the Client authorises the Bank to debit the required amounts (taking into consideration the foreign exchange fluctuations and other losses in such case) from the account of the Client and if the funds are not available in the Client's account, then the Client will remain liable for payment of the full amount including the interest and exchange rate losses.

#### **Foreign outward remittance.**

- 1) Remittance facility is available only to those customers who have completed full KYC in accordance with the requirements of the Bank and the RBI guidelines in this regard from time to time.



- 2) For Persons Resident in India who are eligible to draw foreign exchange Remittance facility under the Liberalized Remittance Scheme of the Reserve Bank of India up to the limits allowed by the Reserve Bank of India subject to the deduction of the applicable Tax collection at Source (TCS) at the rates as may be specified under Income Tax Act. Total amount of foreign exchange shall not exceed the maximum permissible under the LRS scheme and the Beneficiary should be resident outside India and the remittance does not constitute any Current Account or Capital account transaction. The Client shall ensure that the remittance should only be used for the purposes for which it is sent and should not be used for any prohibited or restricted activities.
- 3) Further to the extent allowed under the Exchange Control Laws and as allowed by the Bank from time to time, the Persons Resident in India can do the remittances which are in the nature of the Current Account and Capital Account Transactions.
- 4) Client agrees that the Bank can at any time in the course of transaction stop further processing the remittance, without being liable for any liability notwithstanding that the loss, damage, loss of profit or revenue, business opportunity that may be suffered by the Client, if the Bank believes that carrying out the Remittance transaction is not in line with the Exchange Control Laws or is against the interests of the Bank.
- 5) Remittances can be allowed by the Bank in its sole discretion and subject to the Exchange Control Laws to the Non – residents for limited purposes of doing certain type of Current Account and Capital Account Transactions. Bank may allow the eligible Clients for remittance to their own account abroad subject to the FEMA (overseas investment) Rules 2022.
- 6) Client shall provide the true, correct and accurate details of the Beneficiary account number, details of Beneficiary Bank and Intermediary Bank ( ie. CHIP UID< IBAN No. or SWIFT Code etc.) (“Beneficiary Account”) Client confirms that it is not possible for the Bank to cross check or verify any details or any errors even if they are apparent on the record or inadvertent or otherwise. Any omission or commission including the errors by the Client will result in amounts getting credited to a wrong account / bank in foreign country and it will not be possible for the Bank to recall the funds once the Remittance transaction is completed and the Client shall bear the loss in such an event and the Bank shall not be liable for any loss arising out of such errors, commissions or omissions on the part of the Client which has resulted in payment to wrong account / bank in foreign country.
- 7) Client understands that the Instructions once given cannot be cancelled, once the same is submitted to the Bank for processing. This is because due to automation of the Remittance transactions, sometimes the

transactions get executed in a straight through mechanism if all fields are filled in the Instructions. The Bank shall not be obligated to entertain any cancellation or modification request from the Client. However, if for any reason the Bank finds that the Instructions for the Remittance transaction are received but not processed then on best effort basis the Bank may considering the circumstances try to accommodate the request of the Client either to cancel or modify the Instruction without being obligated to do so and without any guarantee for implementation of such cancellation or modification.

**Definitions:**

**Foreign Beneficiary Account:** An account maintained by a Beneficiary with a bank situated in a country other than INDIA (including Bhutan and Nepal)

**Currency cut off and processing timings:** means the cut off time prescribed by the Bank for submitting the applications in respect of remittance of any foreign currency or any foreign country for processing the applications. Any application submitted after the cut off time of any particular currency or country will be processed on the next Business Day of that foreign country or currency.

**Outward remittance means:** any transfer of foreign exchange or foreign currency as defined in FEMA to a beneficiary situated in a foreign country / having account with a foreign bank in accordance with the Instructions of the Client.

**Remittance transaction:** means processing of any transaction either inward or outward involving foreign exchange or foreign currency as defined in FEMA.

**Trade Date :** means day on which the Bank processes the Remittance transaction.